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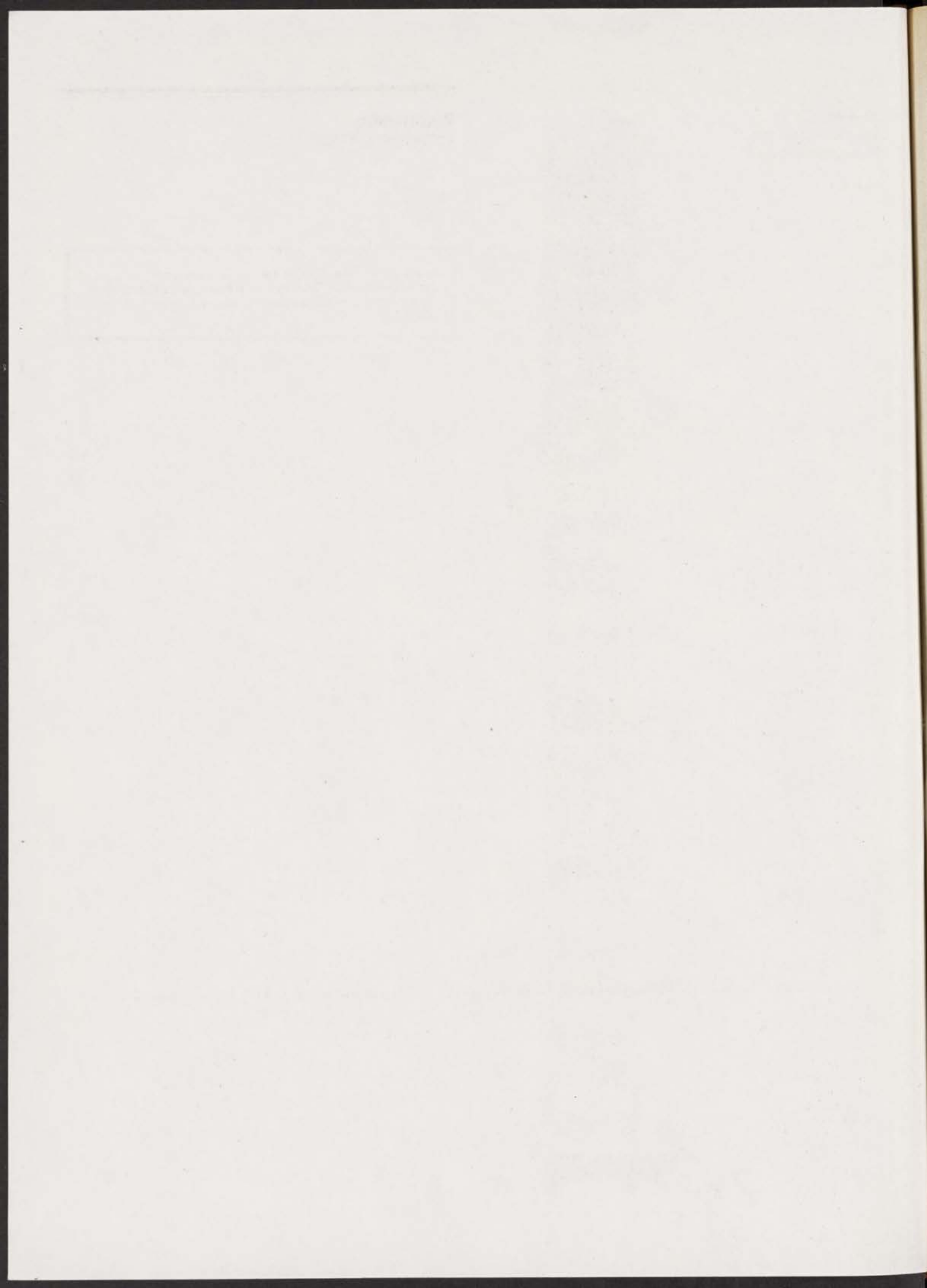
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- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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- WHEN:** October 24; at 1:00 p.m.
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212-264-4810.

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA-89-031]

Milk in the Iowa Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions of the Iowa Federal milk marketing order for the months of September through November 1989. The action increases the amount of milk not needed for fluid use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association to avoid making costly and inefficient movements of milk that would otherwise be made to pool the milk of dairy farmers who have historically supplied the market.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT:

John F. Borovics, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2963, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 21, 1989; published August 25, 1989 (54 FR 35354).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action

lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Iowa marketing area.

Notice of proposed rulemaking was published in the *Federal Register* on August 25, 1989 (54 FR 35354) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Two comments, one supporting and one opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September through November 1989 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1079.13(d) (2) and (3), the words "50 percent in the months of September through November and," and the words "in other months," as they appear in each such paragraph.

Statement of Consideration

This action, for the months of September through November 1989, suspends certain provisions of the Iowa Federal milk order that limit the amount of milk that may be shipped directly from farms to nonpool manufacturing plants and still be priced under the order. The order provides that cooperative associations and pool plant operators may divert up to 50 percent of milk receipts to nonpool plants during September-November and 70 percent of receipts during other months. This action removes the 50-percent diversion limitation and allows greater quantities of milk to be diverted to nonpool plants.

The action was requested by Associated Milk Producers, Inc. (AMPI), a cooperative association that

represents producers who supply the market. AMPI maintains that the action is necessary because of the relationship between available milk production and fluid milk sales. AMPI points out that producer milk receipts during the first six months of 1989 were up about 4.7 percent from the previous year while fluid milk sales were at about the same level as a year earlier. As a result, the Class I utilization of producer milk for the first six months was about 26.5 percent, down slightly from the previous year. Consequently, AMPI projects that about 30 percent of the market's milk supply will be needed for Class I use during the September-November period this year, with about 70 percent of the milk supply being available for manufacturing uses. AMPI maintains that this reserve supply of milk can be most efficiently handled by diverting it directly from farms to nonpool plants for processing. Absent a suspension action, AMPI contends that the costly and inefficient marketing practices of receiving and transferring milk from pool plants would be undertaken to continue to pool the milk of dairy farmers who supply the market. AMPI also requested that consideration be given to suspending the 50-percent diversion limitation for the September-November period for an indefinite duration since the same provision has been suspended during each of the last five years.

The National Farmer's Organization, Inc. (NFO), a cooperative association that represents producers who supply the market, supported the proposed action for the months of September-November 1989. NFO indicates that the 50-percent diversion limitation is out-of-line with the current marketing conditions and has been so for several years. In view of the market's supply/demand relationship, NFO contends that the diversion limitation should be suspended for the Fall of 1989, but, opposed suspending the provision for an indefinite period since it would result in the same diversion limitation being applicable during the relatively short and flush production seasons of the year.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply the market, opposed the proposed action. Mid-Am indicates that the more recent data (May-July 1989) exhibit a

tightening of the market relative to the prior year that is not reflected in the marketwide data for the first six months of the year. Mid-Am notes that for May-July, producer milk receipts in 1989 were about 0.2 percent higher than the same period in 1988, while milk in Class I uses increased by about 5.8 percent. Also, Mid-Am points out that for July 1989, producer milk receipts were below the same month for the previous year, reversing a trend of increased milk production from the same month of the previous year that has lasted since February 1987. As a result of this perceived change in the trend of milk production, and because of anticipated increases in fluid milk sales because of school openings and the uncertainties of the effect of the 1988 drought on future production, Mid-Am contends that the suspension action would be inappropriate. Mid-Am contends that such an action could jeopardize the movement of sufficient supplies of milk to distributing plants to meet fluid milk needs.

The diversion provisions of the producer milk definition recognize that reserve milk supplies that are associated with the fluid milk market can be most efficiently marketed by moving it directly from farms to manufacturing plants for processing. Absent a suspension action of the 50-percent diversion limit, the same quantities of milk could still be moved to manufacturing plants, although handlers would have to utilize the relatively inefficient and costly practice of first receiving milk at pool plants and transferring it to nonpool manufacturing facilities. Thus, the suspension of the 50-percent diversion limitation does not have a direct bearing on the availability of milk at distributing plants. Such availability is more a function of the standards for pooling the various categories of plants under the order. Nevertheless, in view of the concerns expressed by Mid-Am, as well as those of NFO, the suspension should be limited to the months of September through November 1989 and should not be extended for an indefinite period as was proposed.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that uneconomic movements of milk would

likely be made solely for the purpose of pooling the milk of producers who have regularly been associated with the Iowa market;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1079

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, That the following provisions in § 1079.13(d) (2) and (3) of the Iowa order are hereby suspended for the months of September through November 1989.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1079.13 [Suspended in part]

2. In § 1079.13(d) (2) and (3), the words "50 percent in the months of September through November and," and the words "in other months," as they appear in each such paragraph are suspended for the months of September through November 1989.

Signed at Washington, DC, on September 28, 1989.

Jo Ann R. Smith,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 89-23404 Filed 10-3-89; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1446

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Corps

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim Rule.

SUMMARY: This interim rule amends, for the 1988 through 1990 peanut corps, the regulations at 7 CFR Part 1446 with respect to the establishment of a "shrink" adjustment of 4.5 percent for

the export obligation of "contract additional peanuts" purchased by peanut handlers operating under nonphysical supervision if such handlers agree to abide by use restrictions as may be imposed by the Executive Vice President of the Commodity Credit Corporation (CCC). This action is taken as a result of the amendment of section 359 of the Agricultural Adjustment Act of 1938 by the Disaster Assistance Act of 1989 (Pub. L. 101-82).

DATES: This interim rule is effective October 4, 1989. To be assured of consideration, comments must be submitted so as to be received on or before November 3, 1989.

FOR FURTHER INFORMATION CONTACT:

David L. Kincannon, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202-382-0152.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512-1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by this regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560-0024.

This title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on

the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and County Officials. See the notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

As a result of certain changes made by the peanut industry concerning the handling of peanuts, 7 CFR part 1446 was amended by an interim rule published in the *Federal Register* on September 15, 1988 (53 FR 35984) to provide a shrink allowance of 2.0 percent for the 1988 through 1990 crops for those handlers who choose nonphysical supervision and abide by such use restrictions as the Executive Vice President, CCC, specified.

That interim rule was adopted in a final rule published in the *Federal Register* on July 20, 1989 (54 FR 30366). However, as a result of the comments received in response to the interim rule, a proposed rule was published concurrently (54 FR 30395) which, if adopted, would have increased the shrink allowance for such nonphysical supervision handlers to 4 percent for the 1989 and 1990 crops if use restrictions were agreed to and complied with by the handler.

On August 14, 1989, the Disaster Assistance Act of 1989 (the Act) was enacted. Section 601 of the Act requires, effective for the 1988 through 1990 crops of peanuts, that the export obligation of a handler choosing nonphysical supervision shall be reduced by a shrinkage allowance, as determined by the Secretary, to reflect actual dollar value shrinkage experienced by handlers in commercial operations except that the allowance may not be less than 4.5 percent. However, section 601 also provides that the Secretary may establish a lower shrinkage allowance for handlers who fail to comply with restrictions on the use of peanuts as may be specified by CCC to take into account common industry practices.

The comment period for the July 20, 1989, proposed rule ended August 20, 1989. Five comments were received representing one area sheller group, one national and two area grower groups, and one State commodity commission. The sheller organization, although indicating that actual shrink of peanuts exceeded 4.5 percent, supported a 4.5 percent shrink adjustment. The three grower groups supported the proposed rule on the condition that a study be conducted to determine the actual

shrink amount of peanuts. The State commission neither supported nor opposed the proposed rule but expressed concern that the shrink adjustment should represent the actual amount of shrink during storage and handling and that the shrink adjustment be fair to all segments of the peanut industry.

Based on prior information and comments, this interim rule, issued in response to the Act, amends 7 CFR part 1446 to permit for the 1988-90 crops of peanuts a shrink allowance 4.5 percent for nonphysical supervision handlers who comply with CCC-specified use restrictions. With respect to handlers who do not certify compliance with such restrictions, or do not comply with the restrictions, the shrink allowance will remain at 0.5 percent. This rule does not affect handlers who have chosen physical supervision.

All public comments are invited. This rule is issued as an interim rule since the Act amended section 359 of the Agricultural Adjustment Act of 1938 to specify a new conditional minimum of 4.5 percent and marketing of the 1988 crop is almost complete. In order that a final rule may be issued promptly so as to avoid undue uncertainty, it has been determined that the comment period should be limited to 30 days.

List of Subjects in 7 CFR Part 1446

Loan Programs—Agriculture, Peanuts, Price support programs, Warehouse.

Interim Rule

Accordingly, 7 CFR part 1446, Subpart Warehouse Storage Loans and Handler Operations for the 1988 Through 1990 Crops, is amended as follows:

PART 1446—[AMENDED]

1. The authority citation for part 1446 continues to read as follows:

Authority: 7 U.S.C. 1359, 1375, 1421 *et. seq.*; 15 U.S.C. 714 *et. seq.*

§ 1446.138 [Amended]

2. Section 1446.138(b) is amended by removing "2.0" and adding "4.5" in its place.

Signed at Washington, DC, on September 28, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-23405 Filed 9-29-89; 1:47 pm]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 25, and 95

RIN 3150-AD24

Access Authorization Fee Schedule for Licensee Personnel and Implementation of the Standard Form 312

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the fee schedule for background investigations of licensee personnel who require access to National Security Information and/or Restricted Data and access to or control over Special Nuclear Material. These amendments comply with current regulations requiring NRC to publish fee adjustments concurrent with notifications of any changes in the rate charged the NRC by the Office of Personnel Management (OPM) for conducting investigations. The amendments also inform licensees that they have the option, for an additional cost, to have their applications processed in an expedited manner. The NRC is also amending its regulations to require each person to complete a Standard Form 312, "Classified Information Nondisclosure Agreement," when granted an NRC access authorization.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT:

Duane G. Kidd, Chief, Facilities Security and Operational Support Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-4124.

SUPPLEMENTARY INFORMATION: The OPM conducts access authorization background investigations for the NRC and sets the rate charged for these investigations. Effective October 1, 1989, OPM plans to increase the rate it charges NRC for conducting access authorization background investigations. Because the fees that NRC charges its licensees for material access authorizations and personnel security clearances are dependent on the rates charged by OPM for conducting the background investigations, the fee schedules in NRC regulations must be amended to reflect OPM's rate increase. OPM has increased the rate it charges for background investigations by approximately 8 percent. NRC is passing

this additional cost to licensees. The amendments also inform licensees that they have the option, for an additional cost, of having their applications processed in an expedited manner. These changes comply with current regulations requiring NRC to publish fee adjustments concurrent with notification of any changes in the rate charged the NRC by OPM for conducting the investigations.

As a result of a legal challenge to portions of the SF 189-A, "Classified Information nondisclosure Agreement," the Information Security Oversight Office has issued a final rule that implements the use of the SF 312, of the same title, in lieu of the SF 189-A. National Security Decision Directive 84 requires that all persons authorized access to classified information sign a nondisclosure agreement as a condition of access. The SF 312 replaces the SF 189-A to fulfill that requirement.

Because these amendments deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). Good cause exists to dispense with the usual 30-day delay in effective date because the amendments are of a minor and administrative nature dealing with an adjustment in access authorization fees and implementation of the SF 312, in lieu of the SF 189-A.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(a). Therefore, neither an environmental impact statement nor an environmental assessment have been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150-0046, 3150-0047, and 3150-0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 "L" Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of

Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-4124.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 11

Hazardous materials—Transportation, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and the Independent Office Appropriation Act of 1952 and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11, 25, 95.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.15, paragraph (e)(1) is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission, according to the following schedule:

i	NRC-U requiring full field investigation.	\$2,415
ii	NRC-U requiring full field investigation (expedited processing).	2,932
iii	NRC-U based on certification of comparable full field background investigation.	¹ 0
iv	NRC-U or R renewal.....	¹ 15
v	NRC-R.....	¹ 15
vi	NRC-R based on certification of comparable investigation.	² 0

¹ If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of \$2,415.00 will be assessed prior to the conduct of the investigation.

² If the NRC determines, based on its review of available data that a National Agency Check Investigation is necessary, a fee of \$15.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC based on its review of available data, a fee of \$2,415.00 will be assessed prior to the conduct of the investigation.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

3. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201), sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841), E.O. 10865, as amended, 3 CFR 1959-1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 25.13, 25.17 (a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)), and §§ 25.13 and 25.33(b) are also issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 25.18 [Removed]

4. Section 25.18 is removed.

§ 25.23 [Amended]

5. In the second and fourth sentence of the introductory paragraph to § 25.23, the references to "SF 189-A" are changed to read "SF 312."

6. Appendix A to part 25 is revised to read as follows:

APPENDIX A TO PART 25—FEES FOR NRC ACCESS AUTHORIZATION

Category	Fee
Initial "L" access authorization.....	¹ \$15
Reinstatement of "L" access authorization.....	¹ 15
Extension or transfer of "L" access authorization.....	¹ 15
Initial "Q" access authorization.....	2,415
Initial "Q" access authorization (expedited processing).....	2,932
Reinstatement of "Q" access authorization.....	² 2,415
Reinstatement of "Q" access authorization (expedited processing).....	² 2,932
Extension or transfer of "Q".....	² 2,415

APPENDIX A TO PART 25—FEES FOR NRC
ACCESS AUTHORIZATION—Continued

Category	Fee
Extension or transfer of "Q" (Expedited processing).....	* 2,932

* If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of \$2,415.00 will be assessed prior to the conduct of the investigation.

* Full fee will only be charged if investigation is required.

PART 95—SECURITY FACILITY
APPROVAL AND SAFEGUARDING OF
NATIONAL SECURITY INFORMATION
AND RESTRICTED DATA

7. The authority citation for part 95 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201), sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959-1963 COMP., p. 398 (50 U.S.C. 401, note), E.O. 12356, 47 FR 14874, April 6, 1982.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 95.13, 95.15(a), 95.25, 95.27, 95.29(b), 95.31, 95.33, 95.35, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.51, 95.53, and 95.57 are also issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)).

§ 95.33 [Amended]

8. In the third sentence in § 95.33, the reference of "SF 189-A" is changed to read "SF 312."

Dated at Rockville, Maryland this 22nd day of September, 1989.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Executive Director for Operations.

[FR Doc. 89-23403 Filed 10-3-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, and 799

[Docket No. 90806-9206]

Corrections and Revisions to the
Export Administration Regulations;
General License GCG and ECCN
6490F; Intransit Shipments

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule makes several corrections and revisions to the Export Administration Regulations (EAR). The corrections and revisions are designed to change certain provisions that could

prove confusing to exporters. These changes are as follows:

(a) Section 771.14, which authorizes certain shipments of U.S. commodities to agencies of cooperating governments under General License GCG, is amended by inserting language to provide that crime control and detection instruments and equipment may be exported under General License GCG only to COCOM participating countries.

(b) Supplement No. 1 to § 799.1 (the Commodity Control List) is amended by inserting language that was inadvertently omitted from the "Validated License Required" paragraph for ECCN 6490F.

(c) Section 770.5—which currently exempts certain intransit shipments from Commerce Department validated licensing requirements if the shipments are made, without unloading, on board vessels—is revised to include intransit shipments, without unloading, on board aircraft as well as vessels.

EFFECTIVE DATE: This rule is effective October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0005.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these

APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 770, 771, and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770, 771, and 799 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for 15 CFR Part 770 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citation for 15 CFR Parts 771 and 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 770—[AMENDED]

3. Section 770.5 is revised to read as follows:

§ 770.5 Intransit shipments without unloading.

Commodities or technical data shipped on board a vessel or aircraft and passing through the United States in transit from one foreign country to another may be exported without a license from the Office of Export Licensing provided that:

(a) While passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and

(b) They are not originally manifested to the United States.

PART 771—[AMENDED]

4. Section 771.14 is amended by adding a new paragraph (d)(3) to read as follows:

§ 771.14 General license GCG; shipments to agencies of cooperating governments.

(d) Exclusions. * * *

(3) No crime control and detection instruments and equipment may be exported under this general license except to COCOM participating countries.

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

5. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 6490F is amended by revising the "Validated License Required" paragraph to read "Validated License Required: Country Groups S and Z, Iran, and as required by Special South Africa policy below."

Dated: September 28, 1989.

James M. LeMunyon,
Deputy Assistant Secretary for Export
Administration.

[FR Doc. 89-23332 Filed 10-3-89; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6846; 34-27281; 35-24954; 39-2227; IC-17146 IA-1205]

Organization, Functions and Authority Delegations

AGENCY: Securities and Exchange Commission.

ACTION: Rule amendments.

SUMMARY: The Commission is publishing amendments to its rules to delete references to the closed Cleveland, Detroit, and St. Louis Branch Offices, to update the addresses and office hours of the regional and branch offices, and to revise the delegations of authority during emergency conditions.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Carol K. Scott, Assistant General Counsel (202-272-2472), or Fran L. Paver

(202-272-2453), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Two subsections of 17 CFR part 200 are being amended to delete references to the Cleveland, Detroit and St. Louis Branch Offices. The functions of these branch offices have been transferred to the Chicago Regional Office.

One subsection of 17 CFR part 200 is being amended to update the regional and branch offices' addresses and office hours. The addresses listed in the regulations for the following offices are being revised: Atlanta Regional Office, Boston Regional Office, Denver Regional Office, Fort Worth Regional Office, Houston Branch Office, Los Angeles Regional Office, Miami Branch Office, New York Regional Office, Salt Lake City Branch Office and San Francisco Branch Office.

Section 200.203 of title 17 of the CFR, which concerns delegations of authority during emergency conditions, is being amended to delete references to a statute that was repealed and to divisions and regional offices that are no longer in existence. Changes to the order of succession contained in 17 CFR 200.203(c)(1) are necessary to allow the Commission to function effectively under emergency conditions.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure.

Text of Amendments

Title 17, part 200 of the Code of Federal Regulations is amended as follows:

PART 200—[AMENDED]

Subpart G—Plan of Organization and Operation Effective During Emergency Conditions

1. The authority citation for part 200, subpart G, is revised to read as set forth below.

Authority: 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

Section 200.203 is also issued under 15 U.S.C. 78d, 78d-1.

2. Section 200.203 is amended by removing from paragraph (c) the reference to "Pub. L. 87-592 approved August 20, 1962," and in its place inserting "Pub. L. 100-181, section 308(b), 101 Stat. 1249 (1987)." Section 200.203 also is amended by removing paragraph (c)(1) (vii), (viii), and (ix) and revising the remaining paragraphs as follows:

§ 200.203 Organization, and delegations of authority.

* * * * *

(c) * * *

(1) * * *

- (i) The Commissioners in order of seniority
- (ii) The General Counsel.
- (iii) The Executive Director.
- (iv) The Executive Assistant to the Chairman.
- (v) The Division Directors in order of seniority.
- (vi) The Regional Administrators in order of seniority.

* * * * *

Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission

3. The authority citation for part 200, subpart H, is revised to read as follows:

Authority: 5 U.S.C. 552a(f), unless otherwise noted. Section 200.312 is also issued under 5 U.S.C. 552a(k).

4. Section 200.303 is amended in paragraph (a)(2) by (1) removing the complete references to the Cleveland, Detroit, and St. Louis Branch Offices, and (2) revising the remaining addresses and office hours as set forth below.

§ 200.303 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to the records pertaining to them.

(a) * * *

(2) * * *

Atlanta Regional Office, 1375 Peachtree Street, NE., Suite 788, Atlanta, Georgia 30367. Office hours—9 a.m.—5:30 p.m. e.s.t.

Boston Regional Office, John W. McCormack Post Office and Courthouse Building, Suite 700, Boston, Massachusetts 02109. Office hours—9 a.m.—5:30 p.m. e.s.t.

Chicago Regional Office, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1204, Chicago, Illinois 60604. Office hours—8:45 a.m.—5:15 p.m. e.s.t.

Denver Regional Office, 410 Seventeenth Street, Suite 700, Denver, Colorado 80202. Office hours—8 a.m.—4:30 p.m. m.s.t.

Fort Worth Regional Office, 411 West Seventh Street, 8th Floor, Fort Worth, Texas 76102. Office hours—8:30 a.m.—5 p.m. c.s.t.

Houston Branch Office, 7500 San Felipe Street, Suite 550, Houston, Texas 77063. Office hours—8:30 a.m.—5 p.m. c.s.t.

Los Angeles Regional Office, 5757 Wilshire Boulevard, Suite 500 East, Los Angeles, California 90036-3648. Office hours—8:30 a.m.—5 p.m. p.s.t.

Miami Branch Office, Dupont Plaza Center, 300 Biscayne Blvd. Way, Suite 500, Miami, Florida 33131. Office hours—8:30 a.m.—5 p.m. e.s.t.

New York Regional Office, 75 Park Place,
Room 1228, New York, New York 10007.
Office hours—9 a.m.—5:30 p.m. e.s.t.

Philadelphia Regional Office, William J.
Green, Jr. Federal Building, 600 Arch Street,
Room 2204, Philadelphia, Pennsylvania
19106. Office hours—8:30 a.m.—5 p.m. e.s.t.

Salt Lake City Branch Office, U.S. Post Office
and Courthouse, 350 S. Main Street, Room
505, Salt Lake City, Utah 84101. Office
hours—8 a.m.—4:30 p.m. m.s.t.

San Francisco Branch Office, 901 Market
Street, Suite 470, San Francisco, California
94103. Office hours—8:30 a.m.—5 p.m. p.s.t.

Seattle Regional Office, 3040 Federal
Building, 915 Second Avenue, Seattle,
Washington 98174. Office hours—8 a.m.—
4:30 p.m. p.s.t.

5. Section 200.312 is amended by
removing paragraphs (a)(8), (a)(10) and
(a)(18) and redesignating remaining
paragraphs (a)(9) through (a)(29) as
paragraphs (a)(8) through (a)(26) and
republishing them as follows:

§ 200.312 Specific exemptions.

(a) * * *
8. Denver Regional Office Cross-Reference
Index Cards and Denver Regional Office
Investigatory Files;

9. Fort Worth Regional Office General
Indices and Fort Worth Regional Office
Investigatory Files;

10. Houston Branch Office General Indices
and Houston Branch Office Investigatory
Files;

11. Los Angeles Regional Office
Investigative Files;

12. Miami Branch Office General Index of
Files and Miami Branch Office Investigatory
Files;

13. New York Regional Office Master Card
Index and New York Regional Office
Investigatory Files;

14. New York Regional Office Index of
Complaints;

15. Philadelphia Regional Office
Investigatory Files;

16. Salt Lake City Branch Office Cross-
Reference Index Cards and Salt Lake City
Branch Office Investigatory Files;

17. San Francisco Branch Office
Investigative Files and San Francisco Branch
Office Regulation A Files;

18. Seattle Regional Office Master Card
Index and Related Regulatory, Investigatory
and Legal Files Systems;

19. Office of the General Counsel Working
Files;

20. Office of the Chief Accountant Working
Files;

21. Investigations and Actions Index;

22. Complaint Processing System;

23. Investor Service Complaint Index;

24. Name-Relationship Index System;

25. Rule 2(e) of the Commission's Rules of
Practice—Appearing or Practicing Before the
Commission;

26. Division of Enforcement Liaison
Working Files.

By the Commission.

Dated: September 21, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-23303 Filed 10-3-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 1710

[Docket No. R-89-1390; FR-2503]

RIN 2502-AD81

Amendments Relating to Interstate Land Sales Registration

AGENCY: Assistant Secretary for
Housing—Federal Housing
Commissioner Office of Lender
Activities and Land Sales Registration,
(HUD).

ACTION: Final rule.

SUMMARY: The Department, under the
authority provided by 15 U.S.C. 1702(c),
is amending its regulations to provide a
regulatory exemption from the
registration requirements of the
Interstate Land Sales Full Disclosure
Act. The new exemption applies to sales
in subdivisions (as that term is defined
by the Act) of 100 or more lots that are
created by the continual acquisition and
disposal of lots in geographically
scattered locations which, unless
extraordinary steps are taken, are
offered under one common promotional
plan and are, therefore, subject to
registration. However, because of the
very nature of these types of operations
that are constantly acquiring tracts of
land in scattered and diverse parts of
the country, registration is impractical
from both the registrant's and the
registering agency's standpoint.

The new exemption allows developers
of these subdivisions to operate without
the necessity of maintaining a
registration or taking the steps required
to avoid operating under one common
promotional plan.

DATES: *Effective Date:* Under section
7(o)(3) of the Department of Housing
and Urban Development Act (42 U.S.C.
3535(o)(3)), this final rule cannot become
effective until after the first period of 30
calendar days of continuous session of
Congress which occurs after the date of
the rule's publication. HUD will publish a
notice of the effective date of this rule
following expiration of the 30-session-
day waiting period. Whether or not the
statutory waiting period has expired,

this rule will not become effective until
HUD's separate notice is published
announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT:

Roger G. Henderson, Director, Interstate
Land Sales Registration Division,
Department of Housing and Urban
Development, room 6278, Washington,
DC 20410. Telephone (202) 755-0502.
(This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The
information collection requirements
contained in this rule have been
submitted to the Office of Management
and Budget (OMB) for review under the
Paperwork Reduction Act of 1980 and
have been assigned OMB control
number 2502-0243. The public reporting
burden for each of these collections of
information is estimated to include the
time for reviewing and instructions,
searching existing data sources,
gathering and maintaining the data
needed, and completing and reviewing
the collection of information.
Information on the estimated public
reporting burden is provided under the
Preamble heading, *Findings and
Certifications*. Send comments regarding
this burden estimate or any other aspect
of this collection of information,
including suggestions for reducing this
burden, to the Department of Housing
and Urban Development, Rules Docket
Clerk, 451 Seventh Street SW., Room
10276, Washington, DC 20410; and to the
Office of Information and Regulatory
Affairs, Office of Management and
Budget, Washington, DC 20503.

The Interstate Land Sales Full
Disclosure Act (the Act), 15 U.S.C. 1701
through 1720, authorizes the Secretary of
Housing and Urban Development to
issue and amend Regulations
implementing the Act. This rule will
provide relief from the registration
requirements placed upon certain
developers by creating the "Multiple
Site Subdivision Exemption". This
exemption will permit developers of
numerous sites of fewer than 100 lots
each to promote and sell the revolving
inventory of lots under a single common
promotional plan without registration by
simply meeting certain eligibility
requirements which are, for the most
part, already characteristic of the
offerings, and by providing general
information about real estate ownership
along with a minimum of information
about specific lots.

The new exemption is a regulatory
exemption and could be listed in 24 CFR
1710.14 but, because of the unique
character of this exemption, it is being
added as a new § 1710.15, Regulatory
Exemption—Multiple Site Subdivision—

Determination Required. The termination provisions of 24 CFR 1710.16(f) are included in the new section, as are the anti-fraud provisions of 24 CFR 1710.4 (b) and (c).

Response to Public Comment

On August 12, 1988 the Department published its proposed rule (53 FR 30443) authorizing this special exemption. Public comments concerning the proposal were generally favorable. The specific comments received, and the Department's response to them are set forth below.

Seven comments were received and evaluated by the Department. These comments resulted in some revisions to the proposed rule. Several technical changes were made to include references to § 1710.15 where applicable. Several corrections were made to change incorrect citations and spellings.

Several comments were received that implied that HUD was changing its policy in regard to other existing exemptions or offering amendments to them. One commenter believed that HUD was limiting the application of the "100-lot" exemption in light of the common promotional plan concept. HUD does not intend to change its application of any existing exemption, or to modify the definition of a common promotional plan. The new exemption is neither intended to apply to subdivisions clearly qualifying for the "100-lot" exemption nor is it intended to cover those with fewer than 25 lots. Lots that qualify for the statutory exemptions under § 1710.5 will not be counted for purposes of the new exemption.

Another commenter suggested that the scattered site exemption (§ 1710.8) be amended to delete the limitation to prior ownership of 20 lots. Since the less than 25 lot exemption (§ 1710.5(a)) and the 100-lot exemption (§ 1710.6) are statutorily mandated, they cannot be changed through this rule. The exemption in this rule is not intended to cover the limited nature of offerings for the specific types of subdivisions qualifying for those exemptions.

Another commenter asked whether the exemption could be used in conjunction with other exemptions. HUD will treat sales qualifying for the § 1710.5 exemptions as being eligible for use in conjunction with the exemption set forth in this rule.

Two commenters asked for a definition of the word "adjacent" as used in the proposed § 1710.15(a)(2). It was decided to change the word to "contiguous" in this final rule to maintain conformity in the Regulations

since that word is defined and used in other parts of the Regulations.

The most frequent comment related to the new § 1710.15(a)(2), which disqualifies the sale of lots within a subdivision established by a separate developer. Five comments were received recommending removal of this provision. The final rule retains the provision. The new exemption is intended for those developers that continually acquire numbers of scattered sites with limited sales and not those acquiring lots in established subdivisions.

Established subdivisions are normally structured to some degree and are characterized by a plan that contains use restrictions on the land, facilities and amenities; fees; property owners associations; architectural control committees; planned or existing facilities and amenities; liens and mortgages; and other not-readily-apparent characteristics. It is felt that purchasers from a secondary developer—who may or may not be responsible for any of the planned or established subdivision structure—sorely need full disclosure of all these possible hidden factors to assure that they are aware of all conditions, along with the total cost impact, before they purchase a lot and unwittingly become financially obligated or physically involved in (or constricted by) circumstances imposed on lot owners.

Another commenter asked under what circumstances a developer was deemed to have "other evidence of intent," as stated in § 1710.15(a)(2), to acquire land that could disqualify lots in a site from the exemption. No specific definition is anticipated, since we do not intend to restrict the methods by which future acquisitions can be made.

A similar comment suggested that lots purchased from a previous developer be allowed to qualify if none had been sold, if certain county approvals had been obtained and restrictions had been recorded. Under these rare circumstances, HUD will consider making a case-by-case determination if requested under § 1710.16.

Another comment suggested adding additional lot sales situations that could qualify for the exemption. None of these situations has been included in this rule since these suggestions are already covered by other exemptions. Furthermore, such comments are outside the scope of the rule.

Three comments were received regarding § 1710.15(b)(1), which requires lots to be sold in "as is" condition with all advertised improvements or amenities completed and in the condition advertised. The comments requested that HUD allow lots to qualify

where there are uncompleted improvements or amenities, provided that certain assurances, such as bonds, escrow funds, letters of credit or performance bonds exist. Another mentioned that a developer may not be able to deliver telephone service and electricity to certain lots until there is a substantial demand.

The rule's requirement is not being changed, since the exemption does not require a developer to complete any improvements or amenities. Subdivisions with completed facilities may qualify for the single family residence exemption. Furthermore, the issuance of bonds or other assurances does not necessarily guarantee the completion of facilities, since state law requirements for bonding vary widely. It also would be burdensome for HUD to keep current as to the status of the bonds, or to determine the amount necessary to complete such improvements and amenities.

Therefore, if a developer places an advertisement for lot sales under the exemption, it can only refer to those improvements and amenities that are completed. Developers advertising lots as homesites or building lots should make certain that lots meet the criteria set forth in § 1715.20(i).

Two comments were received regarding the access to a lot, both legally and physically, by a road suitable for use by automobile, as stated in § 1710.15(b)(3) of the rule. One requested that HUD consider exempting lots that were inaccessible by automobile, such as island property or unimproved sportsmen's preserves. Another suggested that the term "automobile" be amended to "conventional passenger automobile".

Based upon the comments received and other available information, the Department realizes that a significant number of sites that would otherwise qualify for the new exemption (and that were intended to be eligible for the exemption) would be disqualified if the physical access requirement was limited to "automobile". Therefore, except as noted below, the term "automobile" has been removed.

The exception is for lots which are advertised or otherwise represented as "residential", either primary or secondary, with any inference that a permanent or temporary dwelling unit of any description (excluding collapsible tents) can be built or installed. In such cases there must be physical access by automobile, pick-up truck or equivalent "on-road" vehicle.

A comment was received regarding the title assurance provision of

§ 1710.15(b)(4), requesting that HUD allow exceptions to be approved in writing by the purchaser before the time of closing. This procedure would be acceptable, provided that the actual title binder, policy or opinion is current at the time of closing and shows that title is vested in the seller. This conforms with a similar requirement for the single family residence exemption (see part V(e)(3)(vii) of the Exemption Guidelines, published August 6, 1984 in the *Federal Register* and included as appendix A to 24 CFR part 1700).

With respect to § 1710.15(b)(5), it was suggested that the actual rescission language be set forth in the rule. The same comment also suggested that the term "date of sale" be changed to "date the purchaser signed the contract." This suggestion has been accepted. The section has been rewritten to include the actual rescission language and to refer to the date of signing the contract where applicable instead of the date of sale.

Two comments were received on the requirement in § 1710.15(b)(6) relating to the on-the-lot inspection. These comments suggested that parents or legal guardians be allowed to make onsite inspections for children and minors; that purchasers refusing to visit be permitted to sign a waiver; and that sales be exempted in cases where a purchaser exchanges an originally unseen lot for another lot after visiting the subdivision and receiving disclosure information.

The Department feels that the requirement should remain as written. This conforms to the on-the-lot inspection requirement of other exemptions, such as the single-family residence, intrastate and SMSA exemptions. Any deviation from this requirement would deny the purchaser the opportunity to view the exact lot he or she is purchasing and to make a rational decision on whether or not to purchase the lot.

A comment was received that suggested that the language "or until escrow agent determines that the deed has been duly recorded" be inserted after "developer" in § 1710.15(b)(7). This suggestion was based on "long costly delays" allegedly incurred by developers awaiting the return of recorded deeds from local recorders.

This comment has been rejected, since it is unlikely that the rule's requirement will result in the delay of delivery of the deed. The term "delivery of deed" is defined in Part II(c) of the Exemption Guidelines as "the physical transfer of a recordable deed, executed by the seller to the purchaser, to the purchaser's agent or to the appropriate governmental recording office."

In regard to § 1710.15(b)(8), a comment was received about the disclosure of taxes in the Lot Information Statement for new subdivisions. It was suggested that the last tax bill available or the newly appraised tax value of the lot be used, since the taxing officials may not have made an estimate for taxes when the lots were offered for sale. This rule does not require exact figures. Estimates that the developer makes based upon the best available information are acceptable for purposes of the new exemption.

One commenter brought to HUD's attention several technical errors in the proposed rule that have been corrected. These included the removal of references to telephone and fuel in § 1710.15(b)(9), since they were not referred to in § 1710.15(b)(11). References to § 1710.15 (b)(9) and (b)(10) § 1710.15(b)(11) have been changed to § 1710.15 (b)(8) and (b)(9).

In further reference to § 1710.15(b)(11), the same commenter questioned whether the signature line on the bottom line of the receipt for the Lot Information Statement was for the salesperson or the purchaser. The sample receipt has been revised to contain the designated signature line for both the salesperson and purchaser.

Based upon advice from the Office of Management and Budget, the Department has decided to eliminate a specific printed form for the Lot Information Statement, and has substituted a format, to avoid the time involved to respond to any changes and the cost of regulatory amendments. Therefore, a sample format for the Lot Information Statement and a description of required disclosures is provided.

Four comments were received in regard to the filing fee and request procedure required in proposed § 1710.15(c). One commenter suggested that the \$500 filing fee be reduced to \$50 per lot for subdivisions with less than 10 lots. This comment on the fee has not been accepted, since the exemption is for a method of operation rather than for a set number of lots. Developers eligible for the exemption will not know the total number of lots to be offered at the time of filing, since they are continually acquiring and selling lots as they are located and, if necessary, platted.

Other commenters questioned the necessity of a burdensome clearing process and asked why the new exemption is not self-determining. HUD believes that certain judgment decisions must be made because of the unique nature of the offerings that will be eligible for the new exemption. Therefore, it is essential that the

exemption requirements be uniformly applied from the outset.

Another comment suggested that the "Agent" caption on the "Request for Multiple Site Exemption" form be expanded to state "Agent for purposes of notices or correspondence in connection with this Request." HUD does not believe that this change is necessary in light of the § 1710.1 definition of the term "Agent."

A comment was also received suggesting a change in a statement in the Request for Multiple Site Exemption located in parentheses directly below the agent's telephone number. Certain revisions have been made in response to this comment.

A comment was received regarding the termination of the exemption for failure to submit the Annual Report, as required by § 1710.15(d)(4). This commenter felt that termination should only occur after a notice is issued and an opportunity for hearing is given. The provision has been revised to give the developer 10 days after the receipt of notice from the Secretary to file the Annual Report. Otherwise, the exemption will be terminated.

In regard to the termination of the Exemption Order under § 1710.15(e), a commenter suggested that such termination apply only to the affected site or sites, rather than the entire offering. Since this exemption applies to the entire sales operation and not to individual sites within that operation, this suggestion has not been accepted.

Finding and Certifications

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD Regulations in 24 CFR part which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection from 8:45 a.m. to 5:15 p.m., Eastern Standard Time, in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order of Federal Regulation issued by the President on February 10, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) have a significant adverse effect on

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paper Reduction Act of 1980. Sections 1710.15, 1710.15(d) and 1710.15(b)(11) of this rule

have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN

Description	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours Per Response	Total Hours
Exemption Filing (1710.15)	150	1	150	20.00	3,000
Annual Reports of Activity (1710.15(d))	150	1	150	.28	42
Lot Information Statement Receipts (1710.15(b)(11))	150	50	7,500	.03	225
Subtotals	(¹)	(¹)	7,800	(¹)	3,267
Recordkeeping			150	.28	42
Totals			7,950		3,309

(¹) Varies.

The rule was listed as item H-47-86 (Sequence Number 966) in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708, 16730) under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. Congress provided several specific exemptions from the Act, and from the registration requirements of the Act, for identified small entities. In 15 U.S.C. 1702(c), Congress also directed the Department to create, by regulation, additional exemptions for small entities whose offerings are of a small amount or limited character. This exemption is being promulgated pursuant to that authority.

The Catalog of Federal Domestic Assistance Program number is 14.801.

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this rule does not have a substantial, direct effect on the States or on the relationship between the Federal Government and the States, or on the distribution of power or responsibilities among the various levels of government. The rule provides an exemption, under specified conditions, from otherwise applicable registration requirements, to private entities subject to the Interstate Land Sales Full Disclosure Act. Provision of such an exemption is expressly authorized by statute.

HUD has determined that this rule is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because it does

not affect the role or institution of the family in society. The rule provides a specific exemption from registration requirements for particular types of transactions under the Interstate Land Sales Full Disclosure Act. Any impact on the institution of the family in society is most indirect and most minimal.

List of Subjects in 24 CFR Part 1710

Consumer protection, Land sales, reporting and recordkeeping requirements.

Accordingly, 24 CFR part 1710 is amended as follows:

PART 1710—LAND REGISTRATION

1. The authority citation for 24 CFR part 1710 is revised to read as follows:

Authority: Sec. 1419, Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1718; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. Section 1710.1 is amended by adding a new paragraph as follows:

§ 1710.1 [Amended]

* * * * *

"Senior executive officer" * * *

"Site" means a group of contiguous lots whether such lots are actually divided or proposed to be divided. Lots are considered to be contiguous even though contiguity may be interrupted by a road, park, small body of water, recreational facility or any similar object.

"State" * * *

3. Section 1710.4 is amended by revising paragraph (d) to read as follows:

§ 1710.4 Exemptions—general.

* * * * *

(d) Eligibility for exemptions available under §§ 1710.5 through 1710.14 is self-determining. With the exception of the exemptions available under §§ 1710.15 and 1710.16, a developer is not required to file notice with or obtain the approval of the Secretary in order to take advantage of an exemption. If a developer elects to take advantage of an exemption, the developer is responsible for maintaining records to demonstrate that the requirements of the exemption have been met.

* * * * *

4. The following new section is added as § 1710.15:

§ 1710.15 Regulatory exemption—multiple site subdivision—determination required.

(a) *General.* (1) The sale of lots contained in multiple sites of fewer than 100 lots each, offered pursuant to a single common promotional plan, is exempt from the registration requirements.

(2) For purposes of this exemption, the sale of lots in an individual site that exceeds 99 lots is not exempt from registration. Likewise, the sale of lots in a site containing fewer than 100 lots, where the developer either owns contiguous land or holds an option or other evidence of intent to acquire contiguous land which, when taken cumulatively, would or could result in one site of 100 or more lots, is not exempt from registration. Furthermore, the sale of lots that are within a subdivision established by a separate developer is not exempt from registration by this provision.

(b) *Eligibility Requirements.* The sale of each lot must meet the following requirements to be eligible for this exemption.

(1) The lot is sold "as is" with all advertised improvements and amenities completed and in the condition advertised.

(2) The lot is in conformance with all local codes and standards.

(3) The lot is accessible, both legally and physically. For lots which are advertised or otherwise represented as "residential", either primary or secondary, with any inference that a permanent or temporary dwelling unit of any description (excluding collapsible tents) can be built or installed, physical access must be available by automobile, pick-up truck or equivalent "on-road" vehicle.

(4) At the time of closing, a title insurance binder or title opinion reflecting the condition of title must be issued to the purchaser showing that, subject only to exceptions approved in writing by the purchaser at the time of closing, marketable title is vested in the seller.

(5) Each contract or agreement and any promissory notes—

(i) Contain the following non-waivable provision in bold face type (which must be distinguished from the type used for the rest of the document) on the face or signature page above all signatures:

You have the option to cancel your contract or agreement of sale by notice to the seller until midnight of the seventh day following the date of signing of the contract or agreement.

If you did not receive a Lot Information Statement prepared pursuant to the rules and regulations of the Interstate Land Sales Registration Division, U.S. Department of Housing and Urban Development, in advance of your signing the contract or agreement, the contract or agreement of sale may be cancelled at your option for two years from the date of signing.

If the purchaser is entitled to a longer revocation period by operation of state or local law, that period becomes the Federal revocation period and the contract must reflect the requirement of the longer period rather than the seven days. The revocation provisions may not be limited or qualified in the contract or other document by requiring a specific type of notice or by requiring that notice be given at a specified place.

(ii) Obligate the developer to deliver, within 180 days, a warranty deed (or its equivalent under local law) for the lot which at the time of delivery is free from any monetary liens or encumbrances.

(6) The purchaser or purchaser's spouse makes a personal on-the-lot inspection of the lot to be purchased before signing a contract.

(7) The purchaser's payments are deposited in an escrow account

independent of the developer until a deed is delivered.

(8) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot purchased (see paragraph (b)(11) of this section).

(9) Prior to the purchaser signing a contract or agreement of sale, the developer discloses in a written Lot Information Statement the name, address and telephone number of the local governmental agency or agencies from which information on permits or other requirements for water, sewer and electrical installations can be obtained. This Statement will also contain the name, address and telephone number of the suppliers which would or could provide the foregoing services.

(10) The lot sale must comply with the anti-fraud provisions of 24 CFR 1710.4 (b) and (c) and the sales practices and standards in 24 CFR 1715.10 through 1715.28.

(11) A written Lot Information Statement must be delivered to, and acknowledged by, each purchaser prior to his or her signing a contract or agreement of sale, and must contain the information shown in the format below. The Statement must be typed or printed in at least 10 point font. A copy of the acknowledgement will be maintained by the developer for three years and will be made available to OILSR upon request. If the Statement is not delivered as required, the contract or agreement of sale may be revoked and a full refund paid, at the option of the purchaser, within two years of the signing date and the contract or agreement of sale will clearly provide this right.

Sample Format

(Use of the following headings and first paragraph are mandatory.)

Lot Information Statement

Important: Read Carefully Before Signing Anything

The developer has obtained a regulatory exemption from registration under the Interstate Land Sales Full Disclosure Act. One requirement of that exemption is that you must receive this Statement prior to the time you sign an agreement (contract) to purchase a lot.

Right to Cancel

(Under this heading the developer is to state the specific rescission rights provided for in the contract pursuant to 1710.15(b)(5)(i)).

Risk of Buying Land

(Under this heading the developer is to list the following information:)

There are certain risks in purchasing real estate that you should be aware of. The following are some of those risks:

The future value of land is uncertain and dependent upon many factors. Do not expect all land to automatically increase in value.

Any value which your lot may have will be affected if roads, utilities and/or amenities cannot be completed or maintained.

Any development will likely have some impact on the surrounding environment. Development which adversely affects the environment may cause governmental agencies to impose restriction on the use of the land.

In the purchase of real estate, many technical requirements must be met to assure that you receive proper title and that you will be able to use the land for its intended purpose. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

If adequate provisions have not been made for maintenance of the roads or if the land is not served by publicly maintained roads, you may have to maintain the roads at your expense.

If the land is not served by a central sewage system and/or water system, you should contact the local authorities to determine whether a permit will be given for an on-site sewage disposal system and/or well and whether there is an adequate supply of water. You should also become familiar with the requirements for, and the cost of, obtaining electrical service to the lot.

Developer Information

(Under this heading the developer is to list the following information:)

Developer's Name: _____
Address: _____
Telephone Number: _____

Lot Information

(Under this heading the developer is to list the following information:)

Lot Location: _____
(Enter a statement disclosing all liens, reservations, taxes, assessments, easements and restrictions applicable to the lot. A copy of the restrictions may be attached in lieu of recitation.)

Suppliers of Utilities and Issuers of Permits

(Under this heading the developer is to list the name, address and phone number of the appropriate governmental agency or agencies, if any, that will provide information on permits or other requirements for water, sewer and electrical installations. The information will also contain the name, address and telephone number of the suppliers of such utilities which can provide information to the purchaser on costs and availability of such services. A chart similar to the one below may be used to supply this information.)

Listed below are contact points for determining permit requirements, if any, and to obtain information on approximate costs and availability for the listed services:

	Name, Address and Telephone Number of	
	Governmental agency	Supplier
Water.....		
Sewer.....		
Electricity.....		

If misrepresentations are made in the sale of this lot to you, you may have rights under the Interstate Land Sales Full Disclosure Act. If you have evidence of any scheme, artifice or device used to defraud you, you may wish to contact: Interstate Land Sales Registration Division, HUD Building, Room 6278, 451 Seventh Street, SW., Washington, DC 20410.

(The Receipt is to be in the following form:)

Sample Receipt For Lot Information Statement

Purchaser (print or type): _____
 Date: _____
 Signature of purchaser: _____
 Street Address: _____
 City: _____
 State: _____
 Zip: _____
 Name of salesperson (print or type): _____
 Signature of salesperson: _____

(c) *Request for Multiple Site subdivision Exemption.* (1) The developer must file a request for the Multiple Site Subdivision Exemption in the following format. The request must be accompanied by a filing fee of \$500 (prepared in accordance with § 1710.35 (a)) and a sample Lot Information Statement.

Request for Multiple Site Subdivision Exemption

Developer:
 Name: _____
 Address: _____
 Telephone No.: _____
 Agent:
 Name: _____
 Address: _____
 Telephone No.: _____

(Insert a general description of the developer's method of operation.)

I affirm that I am, or will be the developer of the property and/or method of operation described above.

I affirm that the lots in said property will be sold in compliance with all of the requirements of 24 CFR 1710.15.

I further affirm that the statements contained in all documents submitted with this request for an Exemption Order are true and complete.

Date: _____
 Signature: _____
 Title: _____

Warning: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than 5 years or both.

(2) This exemption will become effective upon issuance of an Exemption Order by the Secretary.

(d) *Annual Report.* (1) By January 31 of each year the developer will send a report to the Secretary listing each site and its location available for a sale pursuant to the exemption during the preceding year and indicate the number of lot sales made in each site. The report will describe any changes in the information provided in the Request for the Multiple Site Subdivision Exemption or contain a statement that there are no changes.

(2) The Annual Report must be accompanied by a filing fee of \$100.

(3) The Annual Report must be signed and dated by the developer, attesting to its completeness and accuracy.

(4) Failure to submit the Annual Report within ten days after the receipt of notice from the Secretary will automatically terminate eligibility for the exemption as of the Report due date.

(e) *Termination.* If, subsequent to the issuance of an Exemption Order, the Secretary has reasonable grounds to believe that exemption from the registration requirements in the particular case is not in the public interest, the Secretary may, after issuing a notice and giving the respondent an opportunity to request a hearing within fifteen days of receipt of the notice, terminate the exemption order. The basis for issuing a notice may be apparent omissions or misrepresentations in the documents submitted to the Secretary, the conduct of the developer or agent, such as unlawful conduct or insolvency, or adverse information about the real estate that should be disclosed to purchasers. Proceedings will be governed by 24 CFR 1720.238.

5. Section 1720.238 is amended by revising the heading, the introductory paragraph and paragraphs (a) and (d) to read as follows:

§ 1720.238 Notices of proceedings to terminate exemptions pursuant to §§ 1710.14, 1710.15 and 1710.16 of this chapter.

A proceeding to terminate a self-determining exemption under § 1710.14 or an exemption order under § 1710.15 or § 1710.16 is commenced by issuance and service of a notice which shall contain:

(a) In the case of an exemption under § 1710.14, an identification of the developer and subdivision to which this notice applies. In the case of an exemption under either § 1710.15 or § 1710.16, an identification of the

exemption order to which the notice applies.

(d) A notice that failure to file an answer or motion as provided under § 1720.240 will result, in the case of a notice issued under § 1710.14, an order terminating eligibility for the exemption, or, in the case of a notice issued under either § 1710.15 or § 1710.16, an order terminating the exemption order.

6. Section 1720.239 is amended by revising the heading and paragraphs (a) and (c) as follows:

§ 1720.239 Hearings—Notice of proceedings pursuant to §§ 1710.14, 1710.15 and 1710.16 of this chapter.

(a) A developer, upon receipt of a notice of proceedings issued under §§ 1710.14, 1710.15 and 1710.16 of this chapter, may obtain a hearing by filing a written request contained in the notice of proceedings. The request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1720.245. Filing of a motion for a more definite statement under § 1720.315 shall alter the period of time to request a hearing in accordance with § 1720.240.

(c) Failure to answer within the time allowed by § 1720.240, or failure to appear at a duly scheduled hearing shall result in an appropriate order under § 1710.14 § 1710.15 or § 1710.16 of this chapter terminating the developer's exemption. The order shall be effective as of the date of service or receipt.

Dated: August 18, 1989.

James E. Schoenberger,
 General Deputy Assistant Secretary for
 Housing, Federal Housing Commissioner.
 [FR Doc. 89-23365 Filed 10-3-89; 8:45 am]
 BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay Reg. 89-03]

Safety Zone Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a moving safety zone extending 200 yards ahead, 100 yards astern, and 50 yards abeam both sides around the Red & White Fleet ferry boat HARBOR EMPEROR as it transit from

Pier 1 in San Francisco to the naval vessel USS INDEPENDENCE anchored in approximate position 37-49-29 N, 122-26-30 W on October 7, 1989 at approximately 9:45 a.m. P.d.t. The Zone is needed to protect the ferry boat HARBOR EMPEROR and her embarked dignitaries from a safety hazard associated with transiting through unusually dense small vessel concentrations assembled along the San Francisco waterfront for a parade of naval ships and a series of aerial displays. Entry into this zone is prohibited unless authorized by the captain of the port.

DATES: Effective Dates: This regulation becomes effective on October 7, 1989 at approximately 9:45 a.m. P.d.t., when the Red & White Fleet ferry boat HARBOR EMPEROR, carrying approximately 300 dignitaries departs Pier 1 in San Francisco and remains in effect as the ferry boat transits to USS INDEPENDENCE anchored west of Alcatraz island in San Francisco Bay. It terminates on October 7, 1989 at approximately 10:15 a.m. P.d.t., when the ferry boat has moored to the naval vessel USS INDEPENDENCE unless sooner terminated by the captain of the port.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Keith Bradley, Marine Safety Office San Francisco Bay, at (415) 437-3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafters of this regulation are Lieutenant (junior grade) Keith Bradley, project officer for the captain of the port, and Lieutenant Commander John Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation will occur on October 7, 1989 when a large number of small craft will gather along the San Francisco waterfront to watch the Navy parade of ships and aerial displays during the public start of Fleetweek '89 activities. Ferry boats will continue to operate on their normal weekend schedules during the Fleetweek '89 activities, and small craft will be accustomed to ferry traffic

departing and arriving near Piers 39 and 41 in San Francisco. The departure of Red & White Fleet ferry boat HARBOR EMPEROR from Pier 1 on October 7, 1989 will be an unusual event that warrants measures beyond the Rules of the Road to ensure the safety of the ferry, its embarked dignitaries, and members of the boating public as the ferry transits the waters of San Francisco Bay near the San Francisco waterfront. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Waterways. Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A new § 165.T1163 is added to read as follows:

§ 165.T1163 Safety Zone: San Francisco Bay.

(a) *Location:* The following area is a safety zone: The waters of San Francisco Bay extending 200 yards ahead, 100 yards astern, and 50 yards abeam both sides of the Red & White Fleet ferry boat HARBOR EMPEROR from the time that it departs from Pier 1 in San Francisco at approximately 9:45 a.m. P.d.t., while it transits the waters of San Francisco Bay, until it moors at approximately 10:15 a.m. P.d.t. to the naval vessel USS INDEPENDENCE which will be anchored west of Alcatraz island in approximate position 37-49-29 N, 122-26-30 W.

(b) *Effective date:* This regulation becomes effective on October 7, 1989 at approximately 9:45 a.m. p.d.t., when the Red & White Fleet ferry boat HARBOR EMPEROR departs Pier 1 in San Francisco. It terminates on October 7, 1989 at approximately 10:15 a.m. P.d.t., when the ferry boat moors to USS INDEPENDENCE, unless sooner terminated by the captain of the port.

(c) *Regulation:* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the captain of the port.

Dated: September 27, 1989.

Thomas H. Robinson,
Captain, U.S. Coast Guard, Captain of the Port
San Francisco Bay.

[FR Doc. 89-23360 Filed 10-3-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP San Francisco Bay Reg. 89-02]

Security Zone Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone on the waters of San Francisco Bay extending one hundred yards around the naval vessel USS INDEPENDENCE as it transits the waters of San Francisco Bay and during the time that the vessel is anchored west of Alcatraz island on Saturday, October 7, 1989. The zone is needed to safeguard USS INDEPENDENCE against destruction, loss, and injury from sabotage or other subversive acts, accidents, or other incidents of a similar nature. Entry into this zone is prohibited unless authorized by the captain of the port.

EFFECTIVE DATES: This regulation becomes effective on October 7, 1989, when USS INDEPENDENCE passes beneath the Golden Gate Bridge at approximately 7:00 a.m. P.d.t. It terminates on October 7, 1989, when USS INDEPENDENCE moors at Pier 30/32 in San Francisco at approximately 4:00 p.m. P.d.t., unless sooner terminated by the captain of the port.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Keith Bradley, Marine Safety Office, San Francisco Bay, at (415) 437-3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction, loss, and injury to USS INDEPENDENCE.

Drafting Information

The drafters of this regulation are Lieutenant (junior grade) Keith Bradley, project officer for the captain of the port, and Lieutenant Commander John Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin on October 7, 1989, when USS INDEPENDENCE enters San Francisco Bay to participate in Navy Fleetweek '89 activities. It is expected Fleetweek '89 will attract significant public and media attention. The prominence and controversial nature of the event cause potential for strife or acts of violence. A Security Zone will provide the Captain of the Port San Francisco Bay with the authority necessary to help prevent situations where strategic naval assets of the United States may come to harm. The security of these assets is in the national interest and a Security Zone is justified to help protect these assets and spectators both onboard and near these assets. The parameters of the Security Zone will continue to afford the public with reasonable opportunity to exercise their constitutional rights without imposing a security risk to the naval vessel or its crew. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5, 49 CFR 1.46.

2. A new § 165.T1162 is added to read as follows:

§ 165.T1162 Security Zone: San Francisco Bay.

(a) *Location*: The following area is a security zone: The waters of San Francisco Bay extending 100 yards around the naval vessel USS INDEPENDENCE during its transit from the Golden Gate Bridge to its anchoring point at 37-49-29 N, 122-26-30 W, while the vessel is anchored at or near the above point, and while the vessel transits from the above anchoring point until its moors at Pier 30/32 in San Francisco.

(b) *Effective date*: This regulation becomes effective on October 7, 1989, when USS INDEPENDENCE enters San Francisco Bay at approximately 7:00 a.m. P.d.t. It terminates on October 7,

1989, when USS INDEPENDENCE moors at Pier 30/20 in San Francisco at approximately 4:00 p.m. P.d.t., unless sooner terminated by the captain of the port.

(c) *Regulation*: In accordance with the general provisions in § 165.33 of this part, entry into this zone is prohibited unless authorized by the captain of the port. Section 165.33 also contains other general requirements.

Dated: September 27, 1989.

Thomas H. Robinson,

Captain, U.S. Coast Guard, Captain of the Port San Francisco Bay.

[FR Doc. 89-23361 Filed 10-3-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AD50

Regional Office Committees on Waivers and Compromises

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its current regulation which establishes the number of Committee members required to render a decision on a waiver request or compromise offer. The regulation will require one, two, or three member panels in all cases. The effect of the regulation will be to provide the most efficient use of Committee members.

EFFECTIVE DATE: November 3, 1989.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Office of Finance and Planning, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3405.

SUPPLEMENTARY INFORMATION: On pages 21229 through 21230 of the Federal Register of May 17, 1989 (54 FR 21229), VA published a proposed regulation concerning panel membership on our Committees on Waivers and Compromises. We did not receive any comments during the 30-day public comment period.

Title 38 CFR 1.955 establishes one member, three member, and five member panels for the Committees on Waivers and Compromises. Under this regulation and current VA manuals, a one member panel is used to consider waiver requests on debts of \$1,000 or less, a three member panel is required for waiver requests on debts in excess of \$1,000, and a five member panel is

required for those cases where a three member panel cannot reach a unanimous decision. Three member panels are currently used to consider all compromise offers.

Our revision requires only one, two, or three member panels in all cases. A one member panel would be used for all waiver requests or compromise offers on debts of \$20,000 or less, exclusive of interest and administrative costs. A two member panel would be required for all waiver requests and compromise offers on debts within the Committee's jurisdiction of more than \$20,000, exclusive of interest and administrative costs. If the two member panel cannot reach a unanimous decision, then a third member will be added to the panel and the majority opinion will be the panel's decision. This panel alignment would also hold true on any Notice of Disagreement filed with a Committee decision to deny waiver.

We believe that this revision will provide the most efficient use of Committee members. Under current procedures, three or five Committee members must be used to consider all compromise offers. Since the Committees are considering an increasing number of loan guaranty debts and these debts average approximately \$15,000 per debt, more and more Committee decisions require at least three member panels.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that this rule primarily affects only individuals indebted to the U.S. Government as a result of participation in programs administered by the Department of Veterans Affairs.

This final rule has also been reviewed under Executive Order 12291, Federal Regulation, and has been determined to be nonmajor because it will not have a \$100 million annual effect on the economy and will not have any adverse economic impact on, or increase costs to, consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 1

Claims, Administrative practice and procedure, Veterans.

Approved: September 13, 1989.

Edward J. Derwinski,
Secretary of Veterans Affairs.

38 CFR part 1, General, is amended as follows:

PART 1—[AMENDED]

1. In § 1.955, paragraphs (b) heading, (b)(1), (c) and (d) are removed; paragraphs (b)(2), (b)(3), and (b)(4) are redesignated as paragraphs (b), (c), and (d) respectively and paragraph (e) is added to read as follows:

§ 1.955 Regional Office Committees on waivers and compromises.

(e) *Committee composition.* (1) The Committee shall consist of a Chairperson and Alternate Chairperson and as many Committee members and alternate members as the Director may appoint. Members and alternates shall be selected so that in each of the debt claim areas (i.e., compensation, pension, education, insurance, loan guaranty, etc.) there are members and alternates with special competence and familiarity with the program area.

(2) When a claim is properly referred to the Committee for either waiver consideration or the consideration of a compromise offer, the Chairperson shall designate a panel from the available Committee members to consider the waiver request or compromise offer. If the debt for which the waiver request or compromise offer is made is \$20,000 or less (exclusive of interest and administrative costs), the Chairperson will assign one Committee member as the panel. This one Committee member should have experience in the program area where the debt is located. The single panel member's decision shall stand as the decision of the Committee. If the debt for which the waiver request or compromise offer is made is more than \$20,000 (exclusive of interest and administrative costs), the Chairperson shall assign two Committee members. One of the two members should be knowledgeable in the program area where the debt arose. If the two member panel cannot reach a unanimous decision, the Chairperson shall assign a third member of the Committee to the panel, or assign the case to three new members, and the majority vote shall determine the Committee decision.

(3) The assignment of a one or two member panel as described in paragraph (e)(2) of this section is applicable if the debtor files a Notice of Disagreement with a Committee decision to deny waiver. That is, if the Notice of Disagreement is filed with a decision by a one member panel to deny waiver of

collection of a debt of \$20,000 or less, then the Notice of Disagreement should also be assigned to one panel member. Likewise, a Notice of Disagreement filed with a decision by a two or three member panel to deny waiver of collection of a debt of more than \$20,000 should also be assigned to a Committee panel of two members (three if these two members cannot agree). However, a Chairperson must assign the Notice of Disagreement to a different one, two, or three member panel than the panel that made the original Committee decision that is now the subject of the Notice of Disagreement.

(Authority: 38 U.S.C. 210(c)(1))

§ 1.956 [Amended]

2. In § 1.956(a)(1), remove the words "Department of Veterans Benefits" where they appear and add, in their place, the words, "Veterans Benefits Administration".

§ 1.956 [Amended]

3. In § 1.956(a)(2) and (a)(2)(iv) remove the words, "Department of Medicine and Surgery" where they appear and add, in their place, the words "Veterans Health Services and Research Administration".

[FR Doc. 89-23324 Filed 10-3-89; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AD27

Due Process

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This regulatory amendment sets out procedural protections to be followed when the Department of Veterans Affairs (VA) is considering reduction of the veteran's subsistence allowance because VA has received evidence that the veteran has lost a dependent. This rule brings the procedures followed in these cases into agreement with procedural protections of due process when a veteran is receiving disability compensation or pension and VA receives evidence that the veteran has lost a dependent. The effect of this rule will be to improve and more clearly define procedural protections afforded the veteran.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420, (202) 233-6496.

SUPPLEMENTARY INFORMATION: At pages 10378 through 10380 of the Federal Register of March 13, 1989, the Department of Veterans Affairs (VA) published proposed regulations to improve due process protections when VA is considering reduction of subsistence allowance because VA has received evidence that the veteran has lost a dependent. Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed regulatory amendments. Since no comments, suggestions or objections were received, this rule is adopted as final.

These final regulations do not meet the criteria for a major rule as that term is defined by Executive Order 12291. These final regulations will not have a \$100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Secretary of Veterans Affairs certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these final regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This final rule concerns only VA procedural protections followed in making certain adjustments in awards to individual beneficiaries. This certification can be made because these regulatory amendments will have no significant economic impact on small entities, i.e., small business, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance number for the program affected by these regulatory amendments is 64.116.)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Educational, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 13, 1989.

Edward J. Derwinski,
Secretary of Veterans Affairs.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

1. In § 21.420, paragraph (d) introductory text is revised to read as follows:

§ 21.420 Informing the veteran.

(d) *Prior notification of adverse action.* VA shall give the veteran a period of at least 30 days to indicate his or her disagreement with an adverse action other than one which arises as a consequence of a change in training time or other such alteration in circumstances. If the veteran disagrees, he or she shall be given the opportunity, before appealing the adverse action as provided in § 21.59 of this part, to:

2. Section 21.422 is added to subpart B under the undesignated center heading "Informing the Veterans" to read as follows:

§ 21.422. Reduction in subsistence allowance following the loss of a dependent.

(a) *Notice of reduction required when a veteran loses a dependent.* (1) Except as provided in paragraph (a)(2) of this section, VA will not reduce an award of subsistence allowance following the veteran's loss of a dependent unless:

- (i) VA has notified the veteran of the adverse action, and
- (ii) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that subsistence allowance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of subsistence allowance;

(i) VA is not required to send a pre-reduction notice as stated in paragraph (a)(1) of this section, but;

(ii) VA will send notice contemporaneous with the reduction in subsistence allowance.

(Authority: 38 U.S.C. 3012, 3013)

(b) *Pre-reduction notice.* Where a reduction in subsistence allowance is proposed by reason of information concerning dependency received from a source other than the veteran, VA will:

- (1) Prepared a proposal for the reduction of subsistence allowance, setting forth material facts and reasons;
- (2) Notify the veteran at his or her latest address of record of the proposed action;

(3) Furnish detailed reasons for the proposed reduction;

(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that VA receives a request for such a hearing

within 30 days from the date of the notice; and

(5) Give the veteran 60 days for the presentation of additional evidence to show that the subsistence allowance should be continued at its present level.

(Authority: 38 U.S.C. 3012, 3013)

(c) *Predetermination hearing.* (1) If VA receives a timely request for a predetermination hearing as indicated in paragraph (b)(4) of this section:

(i) VA will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of subsistence allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a VA employee who:

(i) Did not participate in the preparation of the proposal to reduce the veteran's subsistence allowance, and

(ii) Will bear the decision-making responsibility.

(Authority: 38 U.S.C. 3012, 3013)

(d) *Final action.* VA will take final action following the predetermination procedures specified in paragraph (c) of this section.

(1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record at the expiration of 60 days.

(2) If a predetermination hearing was conducted, VA will base final action upon:

- (i) Evidence presented at the hearing;
- (ii) Evidence contained in the claims file at the time of the hearing; and
- (iii) Any additional evidence obtained following the hearing pursuant to necessary development.

(3) Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the veteran setting forth the reasons for the decision, and the evidence upon which it is based. The veteran will be informed of his or her appellate rights and right of representation. (For information concerning the conduct of the hearing see § 3.103 (c) and (d) of this chapter).

(4) When a reduction of subsistence allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of § 21.324 of this part.

(Authority: 38 U.S.C. 3012, 3013)

[FR Doc. 89-23323 Filed 10-3-89; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY**44 CFR Part 64**

[Docket No. FEMA 6851]

List of Communities Eligible for the Sale of Flood Insurance; Ohio et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 418, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of

Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
Ohio	Fairlawn, City of	Summit	390657	August 3, 1989, Suspension withdrawn.
Do	Hanover, Village of	Licking	390831	Do.
Do	Holland, Village of	Lucas	390659	Do.
Do	Indian Hill, City of	Hamilton	390221	Do.
Do	Ironton, City of	Lawrence	390327	Do.
Do	Kenton, City of	Hardin	390253	Do.
Pennsylvania	Hulmeville, Borough of	Bucks	420190	Do.
South Dakota	Kennebec, Town of	Lyman	460050	Do.
Utah	Glenwood, Town of	Sevier	490126	Do.
Do	Green River, City of	Emery	490062	Do.
Do	Hatch, Town of	Garfield	490068	Do.
Do	Henrieville, Town of	Garfield	490069	Do.
Do	Holden, Town of	Millard	490201	Do.
Do	Hyde Park, Town of	Cache	490016	Do.
Do	Unincorporated Areas	Iron	490073	Do.
Do	Joseph, Town of	Sevier	490127	Do.
Do	Lewiston, City of	Cache	490018	Do.
Do	Mantua, Town of	Box Elder	490009	Do.
Colorado	Frisco, Town of	Summit	080245	August 15, 1989, Suspension withdrawn.
Maryland	Unincorporated Areas of	Frederick	240027	Do.
North Dakota	Beulah, City of	Mercer	380066	Do.
Do	Unincorporated Areas of	Dunn	380026	Do.
Do	Lindaas, Township of	Trail	380300	Do.
Do	Lisbon, City of	Ransom	380091	Do.
Do	Wing, City of	Burleigh	380213	Do.
Ohio	Mentor, City of	Lake	390317	Do.
Do	Middletown, City of	Butler	390040	Do.
Do	Mount Healthy, City of	Hamilton	390229	Do.
Do	Mount Vernon, City of	Knox	390311	Do.
Do	New Holland, Village of	Fayette	390448	Do.
Do	New Miami, Village of	Butler	390043	Do.
Do	North College Hill, City of	Hamilton	390232	Do.
South Dakota	Unincorporated Areas of	Davison	460020	Do.
Do	Sisseton, City of	Roberts	460072	Do.
Do	Veblen, Town of	Marshall	460146	Do.
Utah	Smithfield, City of	Cache	490029	Do.
Do	Spring City, City of	Sanpete	490119	Do.
Do	Stockton, Town of	Tooele	490144	Do.
Do	Sunset, City of	Davis	490050	Do.
Wyoming	Unincorporated Areas of	Park	550085	Do.

Issued: September 25, 1989.

Harold T. Durfee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-23421 Filed 10-3-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-605; RM-6392]

Radio Broadcasting Services; Brush, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C1 for Channel 296A at Brush, Colorado, and modifies the Class A license of Randall S. Jacobson, Receiver, for Station KKDD(FM), as requested, to specify operation on the higher powered channel, thereby providing the community with its first expanded coverage FM service. See 54 FR 4048, January 27, 1989. Coordinates used for Channel 296C1 at Brush are 40-15-39 and 103-38-15. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-605, adopted September 11, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Colorado, is amended for Brush, by removing Channel 296A and adding Channel 296C1.Q04

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23379 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-501; RM-6450]

Radio Broadcasting Services; Clearwater, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gulf Coast Radio, Inc., substitutes Channel 250C for Channel 250C1 at Clearwater, Florida, and modifies its license for Station WKRL (FM) to specify operation on the higher powered channel. See 53 FR 44502, November 3, 1988. Channel 250C can be allotted to Clearwater in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.1 kilometers (9.4 miles) northeast to accommodate petitioners desired transmitter location. The coordinates for this allotment are North Latitude 28-02-34 and West

Longitude 82-40-16. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-501, adopted September 13, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Clearwater, Florida, by removing Channel 250C1 and adding Channel 250C.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23380 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-505; RM-6447]

Radio Broadcasting Services; Fitzgerald, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of William L. Taylor, allots Channel 245A to Fitzgerald, Georgia, as that community's first local service. See 53 FR 44208, November 2, 1988. Channel 245A can be allotted to Fitzgerald in compliance with the Commission's minimum distance separation requirements with a site restriction of 12 kilometers (7.5 miles) north to avoid a short-spacing to a rule making proposal in MM Docket No. 88-436, which proposes substitution of Channel 244C2

for Channel 244A at Valdosta, Georgia. The coordinates for this allotment are North Latitude 31-49-25 and West Longitude 83-14-00. With this action, this proceeding is terminated.

DATES: Effective November 13, 1989. The window period for filing applications will open on November 14, 1989, and close on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-505, adopted September 13, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Georgia by adding Fitzgerald, Channel 245A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23381 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-499; RM-6435]

Radio Broadcasting Services; Lumpkin, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of William L. Taylor, Jr., allots Channel 257C2 to Lumpkin, Georgia, as that community's first local FM service. (See 53 FR 44503, November 3, 1988). Channel 257C2 can be allotted to Lumpkin in compliance with the Commission's minimum distance separation requirements with a site restriction of 19

kilometers (18.8 miles) southwest to avoid a short-spacing to Station WAYS, Channel 256C1, Macon, Georgia, and to the construction permit of Station WDMG-FM, Channel 258C, Douglas, Georgia. The coordinates for this allotment are North Latitude 31-54-30 and West Longitude 84-54-38. With this action, this proceeding is terminated.

DATES: Effective November 13, 1989. The window period for filing applications will open on November 14, 1989, and close on December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-499, adopted September 13, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Lumpkin, Georgia, Channel 257C2.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23382 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-252; RM-5099]

Radio Broadcasting Services; Leroy and Urbana, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 281B1 for Channel 224A at Leroy, Illinois, and modifies the license

for Station WMLA(FM) to specify operation on the higher powered channel, as requested by McLean County Broadcasters, Inc. See 51 FR 24412, July 3, 1986. This action also substitutes Channel 223B1 for Channel 280A at Urbana, Illinois, and modifies the license of Station WKIO(FM) to specify operation on the higher class channel, at the request of Tak Communications, Inc. Channel 281B1 can be allotted to Leroy, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 kilometers (5.4 miles) northeast of the city. The coordinates are North Latitude 40-25-10 and West Longitude 88-43-02. Channel 223B1 can be allotted to Urbana, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction 9.7 kilometers (6.0 miles) south, in order to avoid a short-spacing to Station WDEK, Channel 223B at Dekalb, Illinois. The coordinates are North Latitude 40-01-42 and West Longitude 88-10-10. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-252, adopted September 19, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Leroy, Illinois, by removing Channel 224A and adding Channel 281B1, and for Urbana,

Illinois, by removing Channel 280A and adding Channel 223B1.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23383 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-610; RM-6496]

Radio Broadcasting Services; Wellston, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jackson County Broadcasting, Inc., substitutes Channel 244B1 for Channel 244A at Wellston, Ohio, and modifies its license for Station WKOV(FM) to specify the higher powered channel. Channel 244B1 can be allotted to Wellston in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site. The coordinates for this allotment are North Latitude 39-01-45 and West Longitude 82-35-51. Canadian concurrence has been received since Wellston is located within 320 kilometers of the United States-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-610, adopted August 21, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments is amended for Wellston, Ohio, by removing Channel 244A and adding Channel 244B1.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23384 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1532 and 1552

[FRL-3655-8]

Acquisition Regulation; Prompt Payment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim rule with request for comment.

SUMMARY: This document amends the EPA Acquisition Regulation (EPAAR) coverage on prompt payment in response to the Prompt Payment Act Amendments of 1988 in order that payments may be made within the timeframes required. This interim rule affects the preparation and distribution of contractor invoices. Under this rule, EPA contractors will be required to include EPA accounting information on payment requests, to have payment requests and progress reports cover the same time period, and to submit copies of payment requests to EPA project officers and contracting officers.

EFFECTIVE DATE: This regulation is effective October 4, 1989. Public comments on this interim rule must be received on or before December 4, 1989.

ADDRESS: Comments should be addressed to Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street SW, Washington, DC 20460, attn: Joseph Nemargut, Jr.

FOR FURTHER INFORMATION CONTACT: Joseph Nemargut, Jr. at (202) 475-8176 (FTS 475-8176).

SUPPLEMENTARY INFORMATION:

A. Background

The Prompt Payment Act (P.L. 97-177) established standards for the payment of contractor invoices. On October 17, 1988, the President signed Public Law 100-496, known as the Prompt Payment Act Amendments of 1988. Among other things, these amendments establish a thirty day payment period for contractor

payments and eliminate an additional 15 day grace period previously allowed for Federal agencies to make invoice payments without interest penalty.

In making voucher payments, EPA relies on its project officers to ensure vouchers are accurate based on goods or services received. Under EPA's internal processing requirements, these project officers are also required to distribute invoiced costs among various elements of accounting data to ensure the correct funds are used in paying invoices.

The requirement for project officers to assign accounting data to contractor invoices has delayed EPA payments to contractors causing some payments to be made outside the periods required by the Prompt Payment Act. By requiring contractors to indicate applicable accounting information under this interim rule, EPA can better ensure timely payment to contractors. Additionally, by having copies of invoices sent directly to project officers and Contracting Officers, and requiring that invoices have the same period of performance as progress reports, EPA can more quickly and accurately verify invoice information.

This regulation is published as an interim rule due to the urgency of making changes to comply with the Prompt Payment Act Amendments of 1988. The Federal Acquisition Regulation (FAR) 1.501-3(b) permits publication of regulations without the opportunity for advance comments when urgent and compelling circumstances make solicitation of comments impracticable prior to the effective date of coverage.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in this Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements, which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies this rule does not exert a significant economic impact on a substantial number of small entities. The change in invoice distribution requires only one additional copy of an invoice be provided to EPA. The requirement for

contractors to have the same period of performance for both invoices and progress reports reflects existing practices for many contractors and should require only minimal changes for small entities not already in compliance. The requirement for contractors to include accounting information on invoices requires contractors to include information clearly identified on contracts, work assignments, or delivery orders. This should require only minimal changes to invoicing procedures for small entities.

List of Subjects in 48 CFR Parts 1532 and 1552

Government procurement, Contract financing, Solicitation provisions and contract clauses.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is amended as set forth below:

PART 1532—[AMENDED]

1. The authority citation for Part 1532 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1532.908 is amended by adding the following to the end of the section:

1532.908 [Amended]

* * * except for acquisitions not exceeding the small purchase limitation.

PART 1552—[AMENDED]

3. The authority citation for Part 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

4. Section 1552.232-70 is amended by revising the introductory paragraph and paragraph (a) and by adding paragraphs (d) and (e) to read as follows:

1552.232-70 Submission of invoices.

* * * * *

Submission of Invoices (Oct. 1989)

In order to be considered properly submitted, an invoice or request for contract financing payment must meet the following requirements in addition to those of FAR 32.905:

(a) Unless otherwise specified in the contract, an invoice or request for contract financing payment shall be submitted as an original and four copies. The contractor shall submit the invoice to the following offices/individuals designated in the contract: original and one copy to the accounting operations office; two copies to the project officer (the project officer may direct one of

these copies to a separate address); and one copy to the Contracting Officer.

(d) Invoices must clearly indicate the period of performance for which payment is requested and include EPA accounting information necessary to process payments. Separate invoices are required for charges applicable to the basic contract and for each option period. If contract work is ordered through individual work assignments or delivery orders, invoices must show current and cumulative charges by work assignment or delivery order number and EPA accounting information. When contracts, work assignments or delivery orders contain multiple lines of accounting data, charges that cannot be assigned to a single line of accounting information should be allocated based on the percentage of total dollars, unless otherwise specified. Required accounting information includes the Document Control Number (DCN) and the account number shown in block 14 of the SF 26, block 21, of the SF 33, block 12 of the SF 30, or on the individual work assignment or delivery order.

(e) When the contractor invoices on a monthly basis, the period covered by requests for contract financing payments must be the same as the period for monthly progress reports required under this contract. If, in accordance with FAR 52.216-7, the contractor submits requests for contract financing payments more frequently than monthly, one payment request each month must have the same ending period of performance as the monthly progress report. Where cumulative amounts on the monthly progress report differ from the aggregate amounts contained in the request(s) for contract financing payments covering the same period, the contractor must provide a reconciliation of the difference as part of the payment request.

(End of clause)

Dated: September 25, 1989.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 89-23428 Filed 10-3-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF JUSTICE

48 CFR Parts 2801, 2813 and 2819

[Justice Acquisition Circular 89-1]

Amendments to the Justice Acquisition Regulations (JAR) Regarding Class Deviations, Requests for Deviations, Purchase Order Checklist and Withdrawal or Modification of Small Business Set-Asides

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rules.

SUMMARY: Justice Acquisition Circular (JAC) 89-1 amends the JAR, 48 CFR,

Chapter 28 as follows: to amend Part 2801 by revising the procedures for obtaining class deviations and adding procedures and requirements for requesting deviations; to amend Part 2813 by adding a purchase order checklist, which prescribes documentation requirements for the Department's purchase order files; and, to amend Part 2819 by adding agency procedures for withdrawing or modifying small business set-asides.

EFFECTIVE DATE: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive, Justice Management Division, Telephone (202) 272-8354.

SUPPLEMENTARY INFORMATION: The determination is hereby made that these amendments must be issued as final rules. Any delay in issuing these amendments could impair the Department's efforts to make class deviations, to standardize documentation required for purchase orders as well as the ability to resolve differences in the withdrawal or modification of small business set-asides. These amendments were not published for public comment because they do not have an effect beyond the internal operating procedures of the agency.

The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291 except for selected areas. The exception applies to these rules. The Department of Justice certifies that these rules will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601-612).

List of Subjects in 48 CFR Parts 2801, 2813 and 2819

Government procurement, small business set-asides.

Harry H. Flickinger,
Assistant Attorney General for Administration.

For the reasons set out in the preamble, Title 48, Chapter 28 of the Code of Federal Regulations is amended as follows. The authority citation for Parts 2801, 2813 and 2819 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j); and 28 CFR 0.76(j).

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

Subpart 2801.4 [Amended]

1. Section 2801.404 Class deviations is revised as follows:

2801.404 Class deviations.

Requests for class deviations from the FAR or the JAR shall be submitted to the Procurement Executive. The Procurement Executive will consult with the chairperson of the Civilian Agency Acquisition Council, as appropriate, and send his recommendations to the Assistant Attorney General for Administration. The Assistant Attorney General for Administration will grant or deny requests for such deviations. For the purposes of this regulation, requests for deviations involving basic ordering agreements, master type contracts or situations where multiple awards are made on one solicitation are considered to involve more than one contract and are therefore considered to be class deviation requests.

2. A new section 2801.470 Requests for deviations is added as follows:

2801.470 Requests for deviations.

Requests for approval of any deviation from the FAR or JAR shall be forwarded to the Procurement Executive. Such requests will be signed by the Chief of the contracting office. Requests for deviations shall be submitted as far in advance as the exigencies of the situation permit and shall contain the following information as a minimum:

(a) Identification of the FAR or JAR requirement from which a deviation is sought;

(b) A full description of the deviation and the circumstances under which it will be used including background information which will contribute to a fuller understanding of the deviation sought;

(c) A description of the intended effect of the deviation together with the number of procurement actions affected by the deviation, if approved;

(d) A statement as to whether the deviation has been requested previously, and if so, the circumstances of the previous request;

(e) The name of the contractor(s) and identification of the contract(s) affected including the dollar value;

(f) A copy of all pertinent documents including forms or clauses and the proposed contractor's request if any;

(g) A statement of the period of time for which the deviation is needed (when it is known that a deviation will be

required on a permanent basis the chief of the contracting office shall forward with the request an appropriate FAR revision which will cover the matter);

(h) A copy of the alternate procedures the bureau intends to use if the deviation is approved; and,

(i) A copy of the bureau legal counsel's concurrence or comments thereon.

PART 2813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2813.5—[Amended]

3. A new section 2813.570 Content of purchase order files added as follows:

2813.570 Content of purchase order files.

(a) Is the policy of the Department that all purchase order files contain sufficient documentation to accurately portray the circumstances surrounding the purchase action. Each purchase order file shall contain the following completed checklist, or one similar, which contains as a minimum the documents and information that are indicated on the checklist.

(b) Small purchase documentation checklist. The purpose of this small purchase documentation checklist is to assure that all required documentation has been made and a record of that documentation is kept in the small purchase file. The checklist should be completed by responding yes, no or N/A. "No" responses must be explained on a separate sheet of paper which must be attached to the checklist.

(1) Presolicitation:

- Are sufficient funds available to cover all purchases?
 - Have excess listings, FPI, CPBOSH, GSA, and FSS been reviewed prior to soliciting open market sources? (FAR Part 8)
 - Were all necessary waivers, clearances, or exceptions obtained? (FAR 8.404-3, 8.605, 8.706)
 - Was the requirement synopsisized or posted? (FAR 5.101, FIRM 201-32.206(f))
 - Was the requirement set aside for small business? (FAR 13.105)
 - If sole source, is the justification clearly documented? (FAR 13.106(b))
 - Is the reason for not obtaining competition clearly documented? (FAR 13.106(c)(2))
 - Is all quotation information properly documented? (FAR 13.106(c)(3))
 - Has a wage determination been obtained? (Service contracts over \$2500 FAR 22.1002-1)
- (2) Award:

- Is the price paid fair and reasonable? (FAR 13.106(c)(1))
- Is the vendor currently suspended or debarred? (FAR 9.405)
- Have all discounts, time and quantity, been properly recorded?
- Are delivery terms and destination points clear and concise? (FAR 47.303)
- Is all correspondence answered?
- Has a determination of responsibility been made? (FAR 9.103)
- Have all variances to the specifications been approved by the requisitioner?
- If the award is over \$25,000 was an ICAR prepared and reported to the ACF? (FAR 4.601)

PART 2819—SMALL AND DISADVANTAGED BUSINESS CONCERNS

4. A new Subpart 2819.5 Set-Asides for Small Business, consisting of section 2819.506, is added as follows:

Subpart 2819.5—Set-Asides for Small Business

2819.506 Withdrawing or modifying set-asides.

Before a contracting officer may withdraw or modify a small business set-aside, the contracting officer shall seek the concurrence of the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). If the contracting officer and the Director, OSDBU, are unable to agree on the proposed withdrawal or modification, the Director, OSDBU shall forward the matter to the Deputy Attorney General for resolution.

[FR Doc. 89-23415 Filed 10-3-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191 and 195

[Docket No. PS-111; Amdt. No. 191-8 and 195-44]

Transportation of Gas or Hazardous Liquid by Pipeline: New Telephone Numbers for Reporting Incidents, Accidents, and Safety-Related Conditions

AGENCY: Office of Pipeline Safety, DOT.
ACTION: Technical amendment.

SUMMARY: The telephone number to use in Washington, DC to give telephonic notice of gas pipeline incidents and hazardous liquid pipeline accidents has

been changed to 267-2675. Also, the telephone number to use at any location to file a safety-related condition report by telefacsimile (fax) will be changed effective October 9, 1989, from (202) 472-1666 to (202) 366-7128. This document amends the reporting requirements to show these new telephone numbers.

DATES: The amendment to §§ 191.5(b) and 195.52(b) regarding incidents and accidents takes effect October 4, 1989. The amendment to §§ 191.25(a) and 195.56(a) regarding safety-related condition reports takes effect October 9, 1989.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392.

SUPPLEMENTARY INFORMATION:

List of Subjects

49 CFR Part 191

Pipeline Safety, Gas, Reporting requirements.

49 CFR Part 195

Pipeline Safety, Hazardous liquids, Reporting requirements.

Therefore, parts 191 and 195 of title 49 of the Code of Federal Regulations are amended as follows:

PART 191—[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 App. U.S.C. 1681(b) and 1808(b); §§ 191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

§ 191.52 [Amended]

2. The introductory text of § 191.5(b) is amended by removing "426-2675" and adding "267-2675" in its place.

§ 191.25 [Amended]

3. Section 191.25(a) is amended by removing "(202) 472-1666" and adding "(202) 366-7128" in its place.

PART 195—[AMENDED]

4. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

§ 195.52 [Amended]

5. The introductory text of § 195.52(b) is amended by removing "426-2675" and adding "267-2675" in its place.

§ 195.56 [Amended]

6. Section 195.56(a) is amended by removing "(202) 472-1666" and adding "(202) 366-7128" in its place.

Issued in Washington, DC on September 28, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 89-23362 Filed 10-3-89; 8:45 am]

BILLING CODE 4910-60-M

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR-6, Notice No. 28]

RIN: 2130-AA43

Amendment to Alcohol/Drug Regulations; Designation of Post-Accident Testing Laboratory; Correction

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule; correction.

SUMMARY: FRA issues a correction to its final rule amendment that designates a new post-accident testing laboratory. The correct Area Code of the laboratory is (916).

DATES: This correction is effective on October 4, 1989.

FOR FURTHER INFORMATION CONTACT:

Dr. Sam Holley, Manager, Railroad Safety Alcohol and Drug Program (RRS-10), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 366-0501).

SUPPLEMENTARY INFORMATION: On September 27, 1989, FRA published in the Federal Register a final rule amendment designating a new post-accident testing laboratory (54 FR 39716). The notice contained an

incorrect area code for the laboratory. The correct area code for the laboratory is (916), rather than (915), as previously published.

The following correction is made to 49 CFR part 219, Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing, as revised at 54 FR 39716, in the third column, immediately above the words "Issued in Washington, DC": Change "Telephone No. (915) 923-0840" to "Telephone No. (916) 923-0840."

Issued in Washington, DC on October 2, 1989.

Susan M. Coughlin,

Deputy Administrator.

[FR Doc. 89-23645 Filed 10-3-89; 9:24 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register

Vol. 54, No. 191

Wednesday, October 4, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Improved Use of Medical Personnel in Social Security Disability Determinations

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Administration has under consideration a draft recommendation on improved use of medical personnel in making Social Security disability determinations.

DATE: Comments by Friday, October 27, 1989.

ADDRESS: Send comments to Charles Pou, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Charles Pou, 202-254-7020.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Administration is seeking comment on a draft recommendation and report on improved use of medically-trained decisionmakers in Social Security disability determinations. The draft report, by Professor Frank Bloch of Vanderbilt University Law School, examines five federal agencies' use of medical personnel and seeks to draw conclusions from their experiences. Copies of the report are available on request.

The proposed Conference recommendation, which will be discussed in detail when the Committee meets next on Friday, November 3, calls on the Social Security Administration ("SSA") to enhance the role of medically-trained personnel in the initial decision of eligibility and to take steps to improve the quality of medical evidence in decisionmaking. In brief, it recommends elimination of the reconsideration stage and greater

attention to effective development of medical evidence at the initial stage. Several specific steps toward these goals are recommended.

The Committee on Administration seeks comments on the draft recommendation, in preparation for its meeting to be held on Friday, November 3, 1989 at 2:00 pm at the Administrative Conference. At that time, the Committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its Plenary Session scheduled for December 14 & 15, 1989. The Committee also seeks comment on several issues that reflect concerns—expressed by some Committee members—that could ultimately be addressed by a revised recommendation, should the full Committee so decide. These issues are as follows:

(1) How can SSA ensure consistent, effective implementation by state agencies of the recommended changes in initial decisionmaking, given states' diversity and varying degrees of competence? Would "federalization" of the initial decision stage be necessary?

(2) What would be the fiscal, administrative, and qualitative implications—long- and short-term—for SSA and others if the recommendations for enhanced initial stage use of medical deciders were implemented?

(3) Should the Conference's recommendations be extended explicitly to call for the same changes by four other disability agencies—the Department of Labor's Black Lung program, OPM's federal employee pension benefits program, the Department of Veterans Affairs compensation benefits program, and Railroad Retirement benefits?

(4) Should the logic of the recommendations be extended to the appeal stage, so as to call on SSA to replace decisions by administrative law judges ("ALJs") in certain cases with decisions by medically-trained personnel? If so, should medical deciders replace ALJs for *all* appeals cases? For some? Which ones? What decisional or other role should medically-trained personnel, as opposed to legally-trained ALJs, have in the appeal process?

(5) What steps should be taken to secure the appropriate degree of decisional independence for medical

staff? Does the draft recommendations go far enough? Too far?

(6) How can agencies ensure that qualified medical personnel are used in a system with enhanced medical input? What lessons can SSA or other agencies derive from the experience of private insurers' determination processes?

Draft Recommendation

Improved Use of Medical Personnel in Social Security Disability Determinations

The Social Security Administration processes more than two million requests for Disability Insurance Benefits and Supplemental Security Income inquiring a determination whether the claimant is disabled. The Administrative Conference has addressed various aspects of the Social Security Administration's administrative procedures in earlier recommendations.¹ This recommendation focuses more specifically on the appropriate use of medical personnel in making disability determinations.

The Social Security Administration uses medical personnel currently in two ways. First, initial and reconsideration decisions are made at state agencies by teams composed of one lay disability examiner and one medical doctor. Second, medical sources are used to provide evidence of disability in individual cases and to explain or elaborate upon medical evidence obtained from other sources. Medical doctors provide evidence relating to individual claims to state agencies at the initial decision and reconsideration levels and to administrative law judges at the hearing level. Requests can be made to the claimant's treating physician or to an independent physician who is asked to examine the claimant and report on his or her findings. Doctors are asked by some administrative law judges to explain or elaborate upon existing medical evidence; other administrative law judges and most state agency personnel do not use independent medical doctors for these purposes. Medically-trained personnel are involved in the disability determinations process for other federal disability programs as well. Although

¹ See Recommendations 78-2 (appeals process), 87-6 (initial and reconsideration determinations), 87-7 (Appeals Council).

the extent to which they are used varies from program to program, all programs concentrate the use of medical staff at the initial decision stage, as does the Social Security Administration.

There is no doubt that medically-trained personnel can offer valuable assistance in making disability determinations called for by the Social Security Act. Notwithstanding the mixed medical and legal content of the Social Security Act's disability standards, most disability determinations require the resolution of medical issues in one form or another. At the same time, it must be recognized that medical doctors cannot simply apply their general medical expertise to the work of determining disability under a complex and multi-faceted statutory disability standard. Medical doctors are accustomed to evaluating a person's limitations in the context of treatment; they are oriented professionally to identify the cause of and resolve limitations, rather than to identify limitations and then measure them against stated requirements for receipt of benefits. These recommendations are intended to help reconcile the needs for the Social Security Administration disability determination process for medical expertise and the ability of the medical profession to meet those needs.

Medically-trained personnel perform three main functions in current practice. First, they assist in developing the medical records on which disability decisions are based. Second, they provide medical evidence for the record, including medical findings and opinions relating to an individual claimant's impairments and explanations of other medical evidence already in the record. Third, they participate in making disability decisions at the initial and reconsideration levels based on the record.

Each of these functions suggests models for using medically-trained decisionmakers in Social Security disability determinations. The first model would increase the responsibility of medical personnel for compiling all relevant medical evidence. Medical staff would concentrate on evaluating the adequacy of the record and following up with requests for clarification and additional information from treating and consulting medical sources. Medical staff would also be given specific responsibility for assuring that all medical evidence in the record is clear and understandable to both medical and non-medical decisionmakers. A second model would improve the use of medical doctors as sources for supplying medical data and opinions on which disability

decisions can be based. This model also supports the use of medical personnel to evaluate and resolve certain specified medical issues relevant to a claim if, in a particular case, there are medical issues that can be identified as appropriate for separate decision. A third model would make more effective use of medical personnel in a final decisionmaking role. This model would concentrate medical resources at the initial decision level, where a doctor would share the responsibility for decisionmaking with a non-medical disability examiner. The doctor member of the team would be given special responsibility for certain tasks, and would undertake a full and independent review of the entire record in each case. The expectation is that enough open exchange of information between the two decisionmakers and a reasonable allocation of responsibility based on each member's expertise, most disability determinations will be made by consensus. If conflicts arise on medical issues, separate medical personnel would be given the authority to resolve those conflicts.

The following recommendations would implement the important provisions of each of those models.

Recommendations

1. The Social Security Administration should enhance the decisionmaking role of medical staff at the initial decision level. This can be accomplished by improving upon the current practice of using two-member teams—consisting of a medical member who is a licensed physician and non-medical member who is a disability examiner—to determine disability.

2. The medical member of the team should be given primary responsibility for developing the medical evidence in the record.

(a) Additional staff and funds should be made available to assure that a complete record of all evidence relevant to a disability claim is obtained before an initial decision is made on the claim.

(b) Specially trained support staff, including non-medical personnel and nurses, should be available to assist the medical member in developing the medical evidence.

(c) The medical member should, whenever possible, assume direct responsibility for evaluating the adequacy of reports from physicians and for following up with requests for clarification or additional information from these sources.

3. The Social Security Administration should take steps to improve the quality of evidence provided by medical sources for disability adjudications.

(a) Guidelines should be established which identify priorities for the use of treating physicians, examining physicians and non-examining physicians, including specialists, for these purposes.

(b) Selection and evaluation of physicians asked to provide medical information should be done by medical staff independent from the agency staff responsible for making disability decisions and should be supported by a system for quality control covering both the selection of physicians and the reports submitted.

(c) Additional funds should be made available to train and compensate physicians asked to provide medical information.

(d) Medical staff should be able, when appropriate, to consult with specialists before ordering special examinations or tests.

(e) All contacts with medical sources relating to the determination of disability for a particular claim should be documented routinely in writing and included in the record.

4. The Social Security Administration should identify selected issues raised by the applicable disability standards that are appropriate for separate decision by medical staff. The medical member of the team assigned to a claim should be responsible for identifying any special issues raised in the claim that have been designated for separate decision, developing all evidence relevant to the issue, and reaching a decision on that issue.

5. Medically-trained personnel should be used to resolve any conflicts on medical issues that arise in the course of team evaluations of disability at the initial decision level.

(a) Senior medical staff should have the authority to review claims where the team members are unable to agree and to recommend further action, including the development of additional medical evidence, in order to resolve the conflict.

(b) If the conflict persists, a designated senior medical staff member should have the authority to decide the medical issues in dispute.

(c) As part of this process, independent medical experts, or panels of experts, should be identified and retained for use as examining and non-examining consultants, as appropriate.

6. Claimants should be informed specifically of any apparent deficiencies in the medical evidence that could lead to an adverse determination before an initial decision is made.

(a) This notice should be prepared by the medical member of the team and should encourage the claimant to

provide additional information and explanation, as needed.

(b) This notice should express any deficiency clearly in medical terms so that claimants, or their representatives or doctors, can understand what the deficiency is, what additional information or clarification is needed, and that they have the opportunity to correct the deficiency. This notice should also state that the agency will assist claimants in obtaining this information when they are unable to do so on their own due to financial or other constraints.

(c) As part of this process, the medical member should have the authority to require a face-to-face interview with the claimant.

7. All medical staff should be trained fully on legal and program issues, and should work under the supervision of a chief medical office with significant status and independence in the agency.

8. The efforts of the disability determination team should be concentrated on a single initial decision process. A separate reconsideration evaluation should be eliminated.

9. Administrative law judges should have the option to call on a medical expert to assess the need for any additional medical evidence and to explain or clarify medical evidence in the record.

(a) Communication with medical experts should, whenever possible, be in writing. A request for a written opinion from a medical expert would not abridge a claimant's right to cross-examine the expert.

(b) All information and opinions provided by consultants must be included in the record.

Dated: September 28, 1989.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 89-23516 Filed 10-3-89; 8:45 am]

BILLING CODE 5110-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12, 24, and 133

Enforcement of Production of Semiconductor Chip Products; Patent Surveys

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to enable persons seeking protection from infringing semiconductor chip products

(mask works) to obtain the assistance of Customs in preventing pirated chips from being imported into the U.S. This would give rise to a process of Customs recordation of mask works similar to that for copyrights. This proposed remedy would be in addition to, and not in lieu of, the mask work owner's other rights and remedies, such as the right to attempt to secure an injunction against importation from a district court or an exclusion order from the U.S. International Trade Commission (USITC).

Further, the section dealing with patent import surveys would be shifted to the Part entitled "Trademarks, Trade Names and Copyrights", which would then be retitled "Trademarks, Trade Names, Copyrights, Mask Works and Patents."

DATE: Comments must be received on or before December 4, 1989.

ADDRESS: Written comments (preferably in triplicate) must be submitted to and may be inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also to the Office of Management and Budget, Paperwork Reduction Project (1515-0119), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Director, Intellectual Property Rights Task Force, 566-8933.

SUPPLEMENTARY INFORMATION:

Background

Title III of Public Law 98-620, cited as the "Semiconductor Chip Protection Act of 1984," added a new Chapter 9 to title 17, United States Code (17 U.S.C. 901 through 914), providing for protection of mask works that are fixed in semiconductor chip products. A mask work is defined as a series of related images, however fixed or encoded, that represent the three-dimensional patterns in the layers of a semiconductor chip. It is fixed in a semiconductor chip product when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration.

As a condition of the protection extended to mask works under 17 U.S.C. 908(a), protection terminates "if application for registration of a claim of protection in the mask work is not made * * * within 2 years after the date on which the mask work is first commercially exploited." The U.S. Copyright Office has been designated to

administer the registration system for mask works.

The owner of a registered mask work has the exclusive right, under 17 U.S.C. 905, to reproduce it and to import and distribute a semiconductor chip product in which the mask work is embodied. In addition, pursuant to 17 U.S.C. 906, the owner of a particular product made by the owner of the mask work may import or distribute or otherwise dispose of or use, but not reproduce, that particular product without the authority of the owner of the mask work. The term of protection for the mask work owner is 10 years from the date on which the mask work is registered, or the date on which the mask work is first commercially exploited anywhere in the world, whichever occurs first.

Under 17 U.S.C. 910(c)(1), the Secretary of the Treasury and the U.S. Postal Service are empowered to separately or jointly issue regulations for the protection of the rights of mask work owners with respect to importations. These regulations may require, as a condition for the exclusion of articles from the U.S., that the person seeking exclusion take any one or more of the following actions:

(1) Obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC) under section 337, Tariff Act of 1930 (19 U.S.C. 1337), excluding importation of the articles;

(2) Furnish proof that the mask work involved is protected under 17 U.S.C. 905 and that the importation of the articles would infringe the rights of the mask work owner; and/or

(3) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

Under options (2) or (3), which involve a Customs determination, without the intervention of a court or the USITC, that an imported mask work is infringing, articles which are imported in violation of the rights set forth in 17 U.S.C. 905 are subject to seizure and forfeiture in the same manner as property imported in violation of the Customs laws. Any such forfeited article may be destroyed as directed by the Secretary of the Treasury, except that the article may be returned to the country of export whenever it is shown to the satisfaction of the Secretary that the importer had no reasonable grounds for believing that his acts constituted a violation of the law.

The Semiconductor Chip Protection Act (the SCPA) became effective upon its enactment on November 8, 1984. However, 17 U.S.C. 913(a) held the registration and enforcement

mechanisms in abeyance for 60 days. The registration mechanisms and enforcement provisions, therefore, went into effect on January 9, 1985.

By a final rule published as T.D. 87-132 in the Federal Register on October 21, 1987 (52 FR 39217), Customs considered all three of the options for protection of the mask work owner's rights under 17 U.S.C. 905 and decided that it was unable to proceed under options (2) and (3). Instead, Customs amended § 12.39, Customs Regulations (19 CFR 12.39), to add a new paragraph (d), requiring that persons seeking exclusion of infringing semiconductor chip products first obtain a court order enjoining, or an order of the USITC under 19 U.S.C. 1337, excluding, importation of the articles. Exclusion orders issued by the USITC would be enforceable by Customs under section 12.39(b), Customs Regulations (19 CFR 12.39(b)).

Briefly, the reasons given for proceeding in this fashion were that Customs lacked the necessary expertise in semiconductor chip technology to make an infringement determination on its own; chips, and any products in which they were contained, would have to be detained and disassembled for testing purposes, which was considered operationally infeasible; and the process of determining infringement would involve a full adjudicatory review requiring an in-depth analysis of highly technical material.

In view of the continued existence of infringement of intellectual property rights, and the Government's desire to pursue initiatives to encourage adequate and effective protection of those rights, Customs has placed a high priority on enforcement efforts in this area. To this end, Customs is acquiring high technology analyzing equipment as well as additional laboratory personnel. Customs has also created an Intellectual Property Rights Task Force to develop and coordinate extensive training programs, which are already under way, relating to mask works and other intellectual property rights (IPRs). Conversion of a data base for Customs recordings of IPRs to an automated system should also facilitate the enforcement capability for protecting mask works.

Accordingly, under the proposed regulatory revision, the owner of rights in a mask work would be able to obtain the assistance of Customs in preventing pirated chips from being imported into the U.S. This remedy would be in addition to, not in lieu of, the owner's other rights and remedies, such as the right to attempt to secure an injunction against importation from a court or an

exclusion order from the USITC under 19 U.S.C. 1337.

Customs activist approach to protecting mask works thus contemplates the creation of a new recordation procedure similar to that for copyrights, while at the same time maintaining the mask work owner's option of requesting Customs to enforce an order from a court or the USITC. Information as to what is protected and what is suspected will be required from mask work owners, with a high degree of specificity involving such data as tariff subheading and model numbers, and detailed descriptions of products.

Since protection for mask works parallels that for copyrights, it is proposed to revise part 133, Customs Regulations (19 CFR part 133), to include mask works in Customs seizure, detention and ruling proceedings. The protections afforded mask work owners in § 12.39(d) will thus be expanded and included in part 133. For purposes of administrative convenience and consolidation, § 12.39a, covering "patent import surveys", would also be transferred into part 133. The reference to § 12.39a in part 24, Customs Regulations (19 CFR part 24), with respect to fee schedules, would be revised to reflect the transfer of "import surveys" to part 133.

Also, proposed § 133.71(b), which is otherwise identical to present § 133.51(b) (19 CFR 133.51(b)), omits reference to the American manufacturing clause, inasmuch as this is no longer an effective provision of the U.S. copyright laws.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC.

Executive Order 12291

This document does not meet the criteria of a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified, that if adopted, this proposal will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1515-0119), Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

The collection of information in this regulation is in §§ 133.52 and 133.53. The information concerning the recordation of semiconductor mask works is required to enable Customs to protect such products against infringing imports. The likely respondents are businesses.

Estimated total annual reporting and/or recordkeeping burden: 25 hours.

Estimated average annual burden per respondent and/or recordkeeper: 30 Minutes.

Estimated number of respondents and/or recordkeepers: 50

Estimated annual frequency of responses: 1.

Part 178, Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control number assigned by OMB would be amended accordingly if the proposal is adopted.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Imports, Unfair competition.

19 CFR Part 24

Accounting.

19 CFR Part 133

Imports, Copyrights, Mask works, Patents, Semiconductor chip products, Trademarks, Trade names.

Proposed Amendments

It is proposed to amend the Customs Regulations (19 CFR chapter I) as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 would continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

§ 12.39 [Amended]**§ 12.39a [Removed]**

2. It is proposed to amend part 12, Customs Regulations (19 CFR part 12), by deleting §§ 12.39(d) and 12.39a therefrom.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 31 U.S.C. 9701; 26 U.S.C. 4461–4462.

Section 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 927;

§ 24.12 [Amended]

2. It is proposed that § 24.12(a)(3) (19 CFR 24.12(a)(3)), with respect to fee schedules, be revised to remove the reference to § 12.39a and to insert in its place "§ 133.81".

PART 133—TRADEMARKS, TRADE NAMES, COPYRIGHTS, MASK WORKS AND PATENTS

1. It is proposed to revise the title of part 133 to read as set forth above.

2. The authority citation for part 133 would be revised, and would include the specific sectional authority thereunder, as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; (31 U.S.C. 9701).

Subparts F and G also issued under 19 U.S.C. 1337, 1623; 17 U.S.C. 910.

Section 133.1 also issued under 15 U.S.C. 1096, 1124.

Sections 133.2–133.7, 133.11–133.13, 133.15 also issued under 15 U.S.C. 1124.

Section 133.21 also issued under 15 U.S.C. 1124, 19 U.S.C. 1526.

Sections 133.24, 133.46 also issued under 19 U.S.C. 1623.

Section 133.73 also issued under 19 U.S.C. 1558(a).

3. It is proposed to revise § 133.0 to read as follows:

§ 133.0 Scope.

This part provides for the recordation of trademarks, trade names, copyrights, and mask works, for the purpose of prohibiting the importation of certain articles, as well as for the conduct of patent import surveys. It also sets forth the procedures for the disposition of articles bearing prohibited marks or names, and copyrighted or piratical articles, including release to the importer in appropriate circumstances.

4. It is proposed to amend part 133, by redesignating subpart F as subpart H, revising it, and by adding new subparts, F and G and I, to read as follows:

Subpart F—Recordation of Mask Works

Sec.

133.51 Recordation of mask works.

133.52 Application to record mask works.

133.53 Documents, samples and fees to accompany application.

133.54 Effective date, term and cancellation of recordation.

133.55 Change of ownership of recorded mask work.

133.56 Change in name of owner of recorded mask work.

Subpart G—Importations Violating Mask Work Law

133.61 Articles in violation of mask work rights.

133.62 Clearly violating articles—Ex parte seizure and forfeiture.

133.63 Procedure on suspicion of importation of violating mask works.

133.64 Decision of disputed claim of violation.

133.65 Demand for redelivery of released articles.

133.66 Return of seized or detained articles to country of export.

133.67 Alternative procedure: order of a court or the International Trade Commission.

Subpart H—Procedure Following Forfeiture or Assessment of Liquidated Damages

133.71 Relief from forfeiture or liquidated damages.

133.72 Disposition of forfeited merchandise.

133.73 Refund of duty.

Subpart I—Patents: Import Survey on Behalf of Registered Patent Owners

133.81 Registered patent owners: import survey.

Subpart F—Recordation of Mask Works**§ 133.51 Recordation of mask works.**

(a) *Eligible works.* A mask work protected under the Semiconductor Chip Protection Act of 1984 (chapter 9, title 17, United States Code, 17 U.S.C. 901–914) and registered with the U.S. Copyright Office in accordance with title 37, Code of Federal Regulations, part 211 (37 CFR part 211), may be recorded with Customs for import protection.

(b) *Persons eligible to record.* A registered mask work may be recorded with the U.S. Customs Service by the "owner" as that term is defined in 17 U.S.C. 901(a)(6) and includes either the initial owner or a person who has obtained by transfer the totality of rights in the mask work under the Semiconductor Chip Protection Act of 1984 (37 CFR 211.4(b)(2)(ii)).

(c) *Notification of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with § 133.52, § 133.53, § 133.55, or § 133.56.

§ 133.52 Application to record mask work.

An application to record a registered mask work to secure Customs protection against the importation of infringing articles shall be in writing, addressed to: Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229, and shall include the following information:

(a) The name and complete address of the mask work owner;

(b) The country of manufacture of genuine mask works;

(c) The name and principal address of any foreign person or business entity authorized or licensed to use the protected work, a statement as to the exclusive rights authorized; and

(d) When known, information such as relevant item numbers of the Harmonized Tariff Schedule of the U.S., product descriptions and model numbers, importers, or suspected violators of mask work protection.

§ 133.53 Documents, samples and fees to accompany application.

The application for recordation shall be accompanied by the following documents, samples and fees:

(a) *Documents.* An "additional certificate" of mask work registration issued by the U.S. Copyright Office. If the name of the applicant differs from the name of the mask work owner in the certificate, the application shall be accompanied by a certified copy of any assignment, exclusive license, or other document recorded in the Copyright Office showing that the applicant has acquired ownership of the mask work.

(b) *Samples.* (1) A photograph of the chip.

(2) Two reproductions of the mask work fixed in the form of the semiconductor chip product in which it was first commercially exploited and, if possible, a sample of each layer of the mask work in integrated circuit form. The reproductions shall be accompanied by a visually perceptible representation

of each layer of the mask work consisting of:

(i) Drawings or plots in composite form on a single sheet or on separate sheets; or

(ii) A photograph of each layer of the work fixed in a semiconductor chip product.

(3) If the mask work has not been commercially exploited, a visually perceptible representation revealing the totality of the mask work contribution.

(c) *Fee.* Each application shall be accompanied by a fee of \$190 for each mask work to be recorded. The fee shall be paid by a check or money order made payable to the U.S. Customs Service.

§ 133.54 Effective date, term and cancellation of recordation.

(a) *Effective date.* Recordation of a mask work and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by Customs Headquarters instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation of a mask work shall remain in effect until the end of the protection period 10 years after the date on which protection commences under the Semiconductor Chip Protection Act of 1984, or until the ownership of the mask work expires or is transferred.

(c) *Cancellation.* Recordation of a mask work with Customs shall be canceled upon request of the recordant, or if the registration in the U.S. Copyright Office is finally canceled or revoked.

§ 133.55 Change of ownership of recorded mask work.

(a) *Application.* If the ownership of a recorded mask work is transferred and the new owner wishes to continue recordation with Customs, he shall make written application to the Commissioner of Customs as follows:

(1) Comply, as appropriate, with § 133.52; and

(2) Describe any time limit on the rights of ownership transferred;

(3) Provide a certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing the applicant has acquired an ownership interest in the mask work.

(b) *Fee.* The application shall be accompanied by a fee of \$80, which covers all mask works included in the application which have been previously recorded with Customs. A check or money order shall be made payable to the U.S. Customs Service.

§ 133.56 Change in name of owner of recorded mask work.

If there is a change in the name of the owner of a recorded mask work, but no transfer of ownership, written notice specifying the change shall be given to Customs accompanied by the following:

(a) A certified copy of any document recorded in the U.S. Copyright Office showing the change in the name of the owner; and

(b) Payment of a fee of \$80, which covers all mask works included in the application which have been previously recorded with Customs. A check or money order shall be made payable to the U.S. Customs Service.

Subpart G—Importations Violating Mask Work Law

§ 133.61 Articles in violation of mask work rights.

(a) *Definition.* Articles violating mask work law are those imported in violation of the exclusive rights of the owner of a mask work to do or to authorize any of the following specified in 17 U.S.C. 905, namely:

(1) To reproduce the mask work by optical, electronic, or any other means;

(2) To import or distribute a semiconductor chip product in which the mask work is embodied; and

(3) To induce or knowingly to cause another person to do any of the above-described acts.

(b) *Importation prohibited.* The importation of articles in violation of the rights of the owner of a mask work registered in the U.S. Copyright Office is prohibited by 17 U.S.C. 910. The importation of lawfully made copies is not a violation of the law enforced by Customs.

§ 133.62 Clearly violating articles—Ex parte seizure and forfeiture.

(a) *Seizure.* (1) The district director shall seize any imported article which he determines is clearly a violating importation of a mask work protected by recordation with Customs. This determination may be made on the basis of Customs Headquarters rulings or instructions, controlling judicial opinions, or facts clearly evidencing a violation. The adversary proceedings provided for in § 133.63 will not be invoked in this situation.

(2) The district director shall also seize an imported article if the importer does not deny under § 133.63(a) a representation that the article is in violation of a protected mask work.

(b) *Forfeiture.* In either case, the district director shall institute forfeiture proceedings in accordance with part 162 of this chapter, unless other relief is

granted or the violating article may be returned to the country of export as provided in § 133.66.

§ 133.63 Procedure on suspicion of importation of violating mask works.

(a) *Notice to the importer.* If the district director has any reason to believe that an article may be imported in violation of the exclusive rights in a mask work recorded with Customs, he shall withhold delivery, notify the importer of his action, and advise the importer that if the facts so warrant he may file a statement denying that the article is in fact a violating one and alleging that the detention of the article will result in a material depreciation of its value, or a loss or damage to him. The district director also shall advise the importer that, in the absence of a denial by the importer within 20 days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) that the article constitutes a violation of exclusive mask work rights, it shall be considered to be such a violation and shall be subject to seizure and forfeiture.

(b) *Notice to mask work owner.* If the importer of suspected violating articles files a denial as provided in paragraph (a) of this section, the district director shall furnish the mask work owner with a sample of the imported article, together with notice that the imported article will be released to the importer unless, within 20 days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays), the mask work owner files with the district director:

(1) A written demand for the exclusion from entry of the detained imported articles; and

(2) A bond, in the form and amount specified by the district director, conditioned to hold Customs and the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event the Commissioner or his designee determines that the article is not a violating one prohibited importation under 17 U.S.C. 910.

(c) *Result of action or inaction by mask work owner.* After notice to the mask work owner that delivery is being withheld for imported articles suspected of violating a recorded mask work, the district director shall proceed in accordance with the following procedures:

(1) *Demand and bond filed.* If the mask work owner files a written demand for exclusion of the suspected violating articles together with a proper bond, the district director shall promptly

notify the importer and the mask work owner that they must submit further evidence, legal briefs, or other pertinent material to substantiate the claim or denial of violation, within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) from the date of the notice. The burden of proof shall be upon the mask work owner claiming that the article is in fact a violating one. At the close of the period specified for submission of evidence, the district director shall forward the entire file, together with a sample of the imported article, and his view or comments, to Customs Headquarters, Attention: Director, Commercial Rulings Division, Washington, DC 20229, for decision on the disputed claim of violation.

(2) *Violation disclaimed or unsupported.* If the mask work owner disclaims that the specified imported article is in violation of his recorded mask work, or fails to present sufficient evidence or proof to substantiate a claim of violation, the district director shall release the detained shipment to the importer and all further importations of the same article by whomsoever imported.

(3) *Failure to file demand or bond.* If the mask work owner fails to file a written demand for exclusion and bond as required by paragraph (b) of this section, the district director shall release the detained articles to the importer and notify the mask work owner of the release. However, if the mask work owner provides a satisfactory explanation to Customs of why he failed to file a written demand for exclusion and bond, Customs may detain future shipments of the same article on suspicion of violation of the mask work owner's rights.

(4) *Withdrawal of bond.* At any time before transmittal of the case to Customs Headquarters for decision, the mask work owner may withdraw a bond filed in accordance with paragraph (b) of this section. Before returning the bond to the mask work owner and release of the detained articles, the district director shall require the mask work owner and the importer to file written statements agreeing to hold Customs and the district director harmless for any consequence of the return of the bond and release of the detained articles. After the withdrawal of a bond, the district director shall release importations of the same articles by the same importer without further notice to the mask work owner.

§ 133.64 Decision of disputed claim of violation.

(a) *Claim of violation sustained.* Upon determination by the Commissioner of

Customs or his designee that the detained article forwarded in accordance with § 133.63(c)(1) is in violation of the mask work owner's rights, the district director shall seize the detained shipment and either institute forfeiture proceedings in accordance with part 162 of this chapter or, if the conditions prescribed by § 133.66 are met, permit the importer to return the article to the country of export. In either event, the bond of the mask work owner shall be returned.

(b) *Denial of violation sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.63(c)(1) is not a violating one, the district director shall release all detained merchandise and transmit the mask work owner's bond to the importer for private settlement or recovery under the bond.

§ 133.65 Demand for redelivery of released articles.

If it is determined that articles which have been released from Customs custody are subject to the prohibitions or restrictions of this subpart, the district director at the port of entry shall promptly make demand for redelivery of the articles under the terms of the bond on Customs Form 301, containing the same bond conditions as set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the articles are not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(g) of this chapter.

§ 133.66 Return of seized or detained articles to country of export.

Articles seized or detained for violations or suspected violations of the Semiconductor Chip Protection Act of 1984 may be returned to the country of export whenever it is shown to the satisfaction of the district director that the importer had no reasonable grounds for believing that his actions constituted a violation of the Act. If the district director is in doubt as to whether the articles should be returned, the matter may be forwarded to the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229, for decision.

§ 133.67 Alternative procedure: order of a court or the International Trade Commission.

As an alternative to the administrative procedure described in this subpart and subpart F, the mask work owner, whether or not he has recorded the mask work with Customs, may seek an order from a Federal Court

or the International Trade Commission enjoining or excluding importation of an article in violation of mask work rights. To obtain Customs enforcement of an injunction or exclusion order, the mask work owner shall submit a certified copy of the court or ITC order to the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229.

Subpart H—Procedure Following Forfeiture or Assessment of Liquidated Damages

§ 133.71 Relief from forfeiture or liquidated damages.

(a) *Petition for relief.* The importer may petition in accordance with parts 171 and 172 of this chapter for relief from, or cancellation of, a forfeiture incurred for violation of the mask work, trademark or copyright laws, or a claim for liquidated damages for failure to redeliver released merchandise incurred under the provisions of § 133.24, § 133.46, or § 133.65.

(b) *Conditioned relief.* In appropriate cases, except for articles bearing a counterfeit trademark, relief from a forfeiture may be granted pursuant to a petition for relief upon the following conditions as may be specified by the appropriate Customs authority:

- (1) The unlawfully imported or prohibited articles are exported or destroyed under Customs supervision and at no expense to the Government;
- (2) All offending trademarks or trade names are removed or obliterated prior to release of the articles.

§ 133.72 Disposition of forfeited merchandise.

(a) *Trademark (other than counterfeit) or trade name violations.* Articles forfeited for violation of the trademark laws, other than articles bearing a counterfeit trademark, shall be disposed of in accordance with the procedures applicable to forfeitures for violation of the Customs laws, after the removal or obliteration of the name, mark, or trademark by reason of which the articles were seized.

(b) *Copyright violations.* Articles forfeited for violation of the copyright laws shall be destroyed.

(c) *Articles bearing a counterfeit trademark.* The Commissioner of Customs or his designee shall dispose of forfeited articles bearing a counterfeit trademark after obliteration of the trademark, where feasible, in the following manner:

- (1) *Government use.* By delivery to any Federal, State, or local government agency which, in the opinion of the

Commissioner or his designee, has established a need for the article.

(2) *Gifts to charities.* By delivery to any charitable institution which, in the opinion of the Commissioner or his designee, has established a need for the article.

(3) *Sale.* If more than 1 year has passed since the forfeiture, the article may be sold at public auction by the Commissioner or his designee. Prior to sale, the Commissioner or his designee shall determine that a need for the article has not been established by any eligible government organization or charitable institution under paragraph (c)(1) or (c)(2) of this section.

(4) *Destruction.* If the article is unsafe or a health hazard, it shall be destroyed.

(d) *Articles violating a protected mask work.* Articles forfeited for violation of the Semiconductor Chip Protection Act of 1984, shall be destroyed.

§ 133.73 Refund of duty.

If a violation of the trademark, copyright or mask work laws is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation and the duty refunded as an erroneous collection upon exportation or destruction of the prohibited articles in accordance with § 158.41 or § 158.45 of this chapter.

Subpart I—Patents: Import Survey on Behalf of Registered Patent Owners

§ 133.81 Registered patent owners: import survey.

(a) *Application for survey.* When the owner of a patent registered in the United States believes that merchandise is being imported into the United States which infringes such patent, an application for a survey to assist the patent owner in taking appropriate action may be made. The purpose of the survey is to provide the patent owner with the names and addresses of importers of merchandise which appears to infringe the registered patent.

(b) *Content of application.* The application may be made by letter addressed to the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229. It shall state the name and address of the patent owner; and if available, a description of the merchandise believed to infringe the registered patent and the country of manufacture of the merchandise. A certified copy of the patent registration issued by the Patent and Trademark Office showing ownership to be in the name as claimed, 3 additional copies of the patent registration for Customs files,

and a check or money order to cover the fee prescribed by § 24.12(a)(3) of this chapter for the survey selected shall be submitted with the application.

(c) *Length of survey.* Surveys will be made for periods of 2, 4 or 6 months at the option of the applicant.

Approved: September 28, 1989.

Michael H. Lane,

Acting Commissioner of Customs.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-23341 Filed 10-3-89; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Parts 132 and 142

RIN 1515-AA76

Withdrawal of Proposed Customs Regulations Amendments Regarding Quota Quantity Entry Limits and the Filing of Absolute Quotas

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rules; withdrawal.

SUMMARY: This document withdraws two proposals to amend the Customs Regulations regarding quota class merchandise. One proposed rule concerned the quantity of such merchandise that could be entered at the opening of a quota. It was intended to correct a situation whereby some importers have attempted to receive a quantity of quota class merchandise in excess of their pro rata share by filing multiple entries for a quantity in excess of the known restraint level. The other proposed rule was to provide that importers may not transfer allotments from one port of entry to another for absolute quotas that fill at opening. Both proposed rules were intended to overcome very labor intensive procedures Customs had implemented to assure that importers received only their pro rata share of quota class merchandise.

After consideration of the comments received in response to the proposed rules and in light of advances in the automated quota system capabilities and projected additional advances therein, as well as increased voluntary use of the Automated Broker Interface (ABI), it is anticipated that Customs will be able to utilize the automated system capabilities to establish the appropriate controls in the subject situations.

DATE: Withdrawal effective October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Karen Cooper, Quota Branch, Regulatory Trade Programs Division, (202) 566-8592.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1988, Customs published a notice in the *Federal Register* (53 FR 1376), proposing to amend §§ 132.4, 132.13 and 142.21, Customs Regulations (19 CFR 132.4, 132.13 and 142.21), to provide that when an importer files entries or withdrawals for consumption for quantities of quota-class merchandise in excess of the admissible quantity, those entries and withdrawal would be rejected and returned to the importer. The purpose of the proposed rule was to relieve Customs quota control personnel from a considerable workload involved in matching quota quantities and importers to assure that any particular importer would not be allocated a quantity in excess of its pro rata share.

On February 23, 1989, Customs published a notice in the *Federal Register* (54 FR 7781), proposing to amend § 132.12, Customs Regulations (19 CFR 132.12) to provide that an importer could combine merchandise from one entry summary for consumption or withdrawal for consumption with others within the same port to fill his quota allotment, but he could not transfer an allotment of quota from one port of entry to another. The purpose of this proposal was to permit use of the Customs Automated Commercial System (ACS) in calculating quota closings and prorations.

Discussion

Six comments were received in response to the first noted proposed rule. They noted there was difficulty in knowing the exact quota quantity available and that rejection of the entries for what may be an inadvertence or clerical error was rather severe.

Two comments were received in response to the latter proposed rule. They noted that the proposal would increase costs, add delays to an otherwise costly and time consuming process, and would generally be anti-facilitative. The commenters also wondered whether the Automated Commercial System (ACS) could be designed to allow for the transfer of allotments.

Although some of the difficulties noted by the commenters have been corrected, upon reviewing the above comments and noting advances in automation, the increase in voluntary participation in the Automated Broker Interface (ABI) portion of ACS, and projected additional advances in the automated quota system capabilities, Customs has concluded that procedures

contained in the proposed rules would not be necessary. Customs agrees with the commenters that the ACS system could be designed to assure that only available quota quantities are prorated and to track the transfer of allocated quota quantities between ports. The use of the ACS capabilities would relieve Customs from labor intensive procedures without placing additional burdens on the importing public.

Conclusion

In accordance with the above discussion, Customs now believes that the procedures proposed are no longer necessary and should not be implemented. Accordingly, the proposed rule to amend §§ 132.4, 132.13 and 142.21, Customs Regulations (19 CFR 132.4, 132.12, and 142.4) and the proposed rule to amend § 132.12, Customs Regulations (19 CFR 132.12) are being withdrawn.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development. Michael Schmitz,

Acting Commissioner of Customs.

Approved: September 27, 1989.

Salvatore R. Martoche,

Assistant Secretary of the Treasury.

[FR Doc. 89-23342 Filed 10-3-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1316

Administrative Functions, Practices, and Procedures

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The DEA proposes to amend its regulations concerning administrative inspections to set forth its authority to inspect any person who manufactures, distributes, imports, or exports listed chemicals, tableting machines, or encapsulating machines. This amendment is required to fully implement the Chemical Diversion and Trafficking Act of 1988.

DATE: Written comments and objections must be received on or before November 20, 1989.

ADDRESS: Comments and objections should be submitted in quintuplicate to

the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Gitchel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307-7297.

SUPPLEMENTARY INFORMATION: The Chemical Diversion and Trafficking Act, which is included as part of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690), establishes a system which requires certain regulated persons to maintain records of specified transactions which involve chemicals listed in the Act and transactions with tableting and encapsulating machines. Section 6052 of the Chemical Diversion and Trafficking Act (21 U.S.C. 830) describes the records required to be kept pursuant to the Act and provides that such records "shall be available for inspection and copying by the Attorney General."

The Controlled Substances Act, which was amended by the Chemical Diversion and Trafficking Act, provides a mechanism for the Attorney General and his designees to conduct administrative inspections of premises where records required to be kept under provisions of the Act are located. This mechanism is outlined in 21 U.S.C. 880. This section authorizes the Attorney General to conduct administrative inspections of controlled premises. Controlled premises include places where records required under the Act are kept or required to be kept. The definition of controlled premises, therefore includes places where records required to be kept under the Chemical Diversion and Trafficking Act are kept or required to be kept.

This proposed rule will amend that section of the regulations concerning administrative inspections to specifically include records required to be kept pursuant to the Chemical Diversion and Trafficking Act. This is to clarify that such records are subject to inspection utilizing the same requirements of the Act that relate to records concerning controlled substances.

The Administrator of the Drug Enforcement Administration hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and

3(e)(2)(C) of E.O. 12291 this proposed rule has been submitted for review to the Office of Management and the Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1316

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Research, Seizures and forfeitures.

For reasons set out above, it is proposed that 21 CFR part 1316 be amended as follows:

PART 1316—[AMENDED]

1. The authority citation for part 1316, subpart A, is revised to read as follows:

Authority: 21 U.S.C. 822(f), 830(a)(2), 871(b), 880, 958(f), 965.

2. Section 1316.03 is amended by revising paragraph (a) as follows:

§ 1316.03 Authority to make inspections.

(a) Inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under the Act and regulations promulgated under the Act, including, but not limited to, inventory and other records required to be kept pursuant to part 1304 of this chapter, order form records required to be kept pursuant to part 1305 of this chapter, prescription and distribution records required to be kept pursuant to part 1306 of this chapter, records of listed chemicals, tableting machines, and encapsulating machines required to be kept pursuant to part 1310 of this chapter, import/export records of listed chemicals required to be kept pursuant to part 1313 of this chapter, shipping records identifying the name of each carrier used and the date and quantity of each shipment, and storage records identifying the name of each warehouse used and the date and quantity of each storage;

Dated: August 23, 1989.

John C. Lawn,
Administrator, Drug Enforcement
Administration.

[FR Doc. 89-23340 Filed 10-3-89; 8:45 am]

BILLING CODE 4410-05-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[FRL-3655-9]****Approval and Promulgation of Implementation Plans; Wisconsin State Implementation Plan; Withdrawal****AGENCY:** United States Environmental Protection Agency (USEPA).**ACTION:** Notice of proposed rulemaking—Withdrawal.

SUMMARY: On February 22, 1989, (54 FR 7572), USEPA proposed to disapprove a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This proposed revision had been submitted by the Wisconsin Department of Natural Resources as a revision to the Wisconsin SIP and consisted of portions of Wisconsin's 1987 Act 27, which created a program for allocating any growth allowance for sources of volatile organic compounds in Southeastern Wisconsin.

Wisconsin subsequently withdrew this revision to its SIP from further USEPA rulemaking. Thus, USEPA is withdrawing its February 22, 1989, proposal.

EFFECTIVE DATE: October 4, 1989.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Fayette Bright, (312) 886-6069, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6069.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Carbon monoxide, Hydrocarbon, Intergovernmental offices.

Dated: September 21, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-23429 Filed 10-3-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 300**[FRL-3654-6]****Taylor Borough Superfund Site NPL Deletion****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of Intent to Delete a Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete a site from the National Priorities List (NPL) and requests public comments. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This action is being taken by EPA, because it has been determined that all Fund financed response under CERCLA have been implemented and EPA, in consultation with the State, had determined that no further cleanup is appropriate. The intention of this notice is to request public comment on the intent of EPA to delete the Taylor Borough site.

DATE: Comments concerning the site may be submitted on or before November 3, 1989.

ADDRESSES: Comments may be mailed to the Regional Docket. Comprehensive information on the site is maintained and available through the EPA Regional Docket clerk.

The Regional Docket is located at the U.S. EPA Region III Office and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. Requests for copies of the information from the Regional public docket should be directed to the EPA Headquarters Docket Office. A local docket is located at the Taylor Borough Municipal Building.

Addresses for the Regional and Local Docket Offices are:

U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107

Taylor Borough Municipal Building, 122 Union Street, Taylor, PA 18517

FOR FURTHER INFORMATION CONTACT:

Patricia Tan, SARA Special Sites Section, 3HW17, Region III, Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107 (215) 597-3164

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. NPL Delegation Criteria
- III. Deletion Procedures

IV. Basis for Intended Site Deletion**I. Introduction**

The Environmental Protection Agency (EPA) announces its intent to delete The Taylor Borough Superfund Site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject to Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that future conditions at the site warrant such action.

EPA intends to delete The Taylor Borough site from the NPL. The EPA will accept comments on this site for thirty days after publication of this notice in the "Federal Register."

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the site and explains how the site meets the deletion criteria.

The Agency believes it is appropriate to review all sites being considered or proposed for deletion from the NPL, including the site being notice today, to determine whether the requirement for a five-year review (under CERCLA section 121(c)) applies. This is consistent with the intent of the statement in the Administrator's *Management Review of the Superfund Program* (the "90-day Study"), that "EPA will modify Agency policy so that no site, where hazardous substances remain, will be deleted from the NPL until at least one five year review is conducted and the review indicates that the remedy remains protective of human health and the environment." EPA will shortly issue its policy on when and how five-year review sites may be deleted from the NPL. This policy may have an effect on the timing of site deletions proposed in this and other notices.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL, as published in the *Federal Register* on November 20, 1985 (50 FR 47912). Section 300.66(c)(7) of the NCP provides that sites

* * * may be deleted from or recategorized in the NPL where no further response is appropriate.

In making this determination EPA will consider whether any of the following criteria has been met:

(I) EPA in consultation with the State has determined that responsible or other parties have implemented all appropriate response actions required.

(II) All appropriate Fund-financed response under CERCLA has been implemented and EPA in consultation with the State has determined that no further cleanup by responsible parties is appropriate; or

(III) Based on a remedial investigation, EPA in consultation with the State has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary is protective of public health, welfare, and the environment considering environmental requirements that are applicable or relevant and appropriate at the time of the deletion.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

Deletions of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in Section II of this notice, Section 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA will solicit public comment on the proposed deletion of The Taylor Borough Site for thirty days. The comments received during the notice and comment period will be evaluated before the final decision to delete is made.

A decision will occur after U.S. EPA Region III places a notice in the *Federal Register*. The NPL will reflect any deletion in the next update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The Taylor Borough Site is located in Taylor Borough, Lackawanna County, Pennsylvania. This site had been extensively mined for anthracite coal by both strip and underground mining operations. Following the mining operations, the unreclaimed strip mine pits were used as a municipal landfill.

Records from the Pennsylvania Department of Environmental Resources (PADER) also document the disposal of industrial wastes during the 1960's. After the landfill operation ceased, drummed industrial wastes were found on the surface of the site.

During September through November of 1983, EPA removed approximately 1,200 drums from the site. A Remedial Investigation and Feasibility Study Report was initiated in March 1984 and completed in May 1985 by EPA. This report described the necessary remedial actions for this site as follows: removal and off-site disposal to a qualifying facility under the Resource Conservation and Recovery Act (RCRA) 40 CFR part 264, Subpart N of approximately 125 crushed and intact drums and remnants remaining on the surface or partially buried; collection and treatment of contaminated surface water in Ponds 1 and 2; excavation of contaminated soils and wastes from former Drum Storage Areas Nos. 1 and 2 and sediments in Ponds Nos. 1 and 2 for off-site disposal to a qualified RCRA facility; proper backfilling and placement of a 24 inch soil cover over: (a) former drum storage areas 3 and 6 and the entire area in between, and (b) former drum storage area 4 and installation of a chain link fence around the perimeter of both soil covered areas. Since no releases of site contaminants to the groundwater or to the St. John's Creek has been documented there is no need for remediation of either of these waters, however, a monitoring program is warranted to verify over time that no release is occurring. Specifically identified groundwater wells on site will be monitored on a semi-annual basis and the St. John's Creek will be monitored on an annual basis, both for a minimum five year period as part of Operation and Maintenance activities. PADER has agreed with these remedial actions.

During the time period July 1987 through May 1988 a group of Potentially Responsible Parties (PRPs) performed the required remedial actions identified above. EPA was on-site every day during this time period overseeing the work and verifying that the work was performed according to the EPA approved Remedial Design. On December 23, 1988 EPA sent a letter to the PRPs who performed the remedial actions certifying that the work was completed to EPA's satisfaction. Operation and Maintenance activities will be initiated at the Site beginning Spring 1989.

Dated: December 31, 1988.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 89-23301 Filed 10-3-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6946]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 54 FR 2150 on January 19, 1989. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of Augusta County, Virginia.

FOR FURTHER INFORMATION CONTACT:

John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION:

The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Augusta County, previously published at 54 FR 2150 on January 19, 1989, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

On page 2150, in the January 19, 1989 issue of *Federal Register*, the entries under Augusta County (Unincorporated Areas) are corrected to read as follows:

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Lewis Creek Tributary:	
At downstream County boundary	*1,370
Approximately 50 feet upstream of State Highway 613	*1,495
Potterfield Run:	
At confluence with South River	*1,231
Approximately .4 mile upstream of State Highway 796	*1,276
Christians Creek:	
At confluence with Middle River	*1,153
Approximately 550 feet upstream of U.S. Highway 340	*1,383
Long Meadow Run:	
At confluence with Christians Creek	*1,157
Approximately 1.1 miles upstream of State Highway 608	*1,292
Prairie Run:	
At downstream County boundary	*1,394
At downstream side of U.S. Highway 250	*1,413
Back Creek:	
At confluence with South River	*1,336
Approximately 2.4 miles upstream of State Highway 610	*1,593
Staples Hollow:	
Approximately 1,830 feet above confluence with Sulphur Springs Hollow	*1,582
Approximately .4 mile upstream of confluence with Sulphur Springs Hollow	*1,593
Sulphur Springs Hollow:	
Approximately .6 mile upstream of confluence with Grassy Run	*1,567
Approximately 150 feet upstream of Howard Street	*1,580
Staples Hollow:	
Approximately .6 mile upstream of confluence with Grassy Run	*1,627
Approximately .7 mile upstream of confluence with Grassy Run	*1,636
Steele's Run:	
Approximately 80 feet upstream of Malcom Avenue	*1,316
Approximately 960 feet upstream of Malcom Avenue	*1,325

Issued: September 29, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-23420 Filed 10-3-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 89-20]

Definition of Shipper and Availability of Mixed Commodity Rates

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its tariff and service contract rules in 46 CFR parts 580 and 581 to: (1) Amend the definition of "shipper" to clarify the scope of the term, and (2) require that mixed commodity rates be made available only to a "shipper," as proposed, and to "shippers' associations" as presently defined in the Commission rules. A shipper using a mixed commodity rate would be required to furnish the ocean common

carrier a listing of commodities. If the shipper is a non-vessel-operating common carrier ("NVOCC") it would also have to indicate its FMC tariff number on the ocean carrier's bill of lading and on any service contracts to which it is a party. The proposed rule is intended to preclude untariffed NVOCC operations and to otherwise ensure that persons acting as shippers pursuant to the 1984 Act qualify to do so.

DATE: Comments due on or before November 20, 1989.

ADDRESS: Comments (original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523-5796.

SUPPLEMENTARY INFORMATION: Section 3(23) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1702(23), defines "shipper" as "an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made." While the meanings of "owner" and "person to whom delivery is to be made" are generally understood by those involved in ocean transportation, there has been uncertainty as to the meaning of the phrase "person for whose account the ocean transportation of cargo is provided."

In recent years, a variety of entities have emerged as intermediaries or middlemen between the shipper of the goods and the provider of the ocean transportation, i.e., the ocean common carrier. These include NVOCCs,¹ ocean freight forwarders,² shippers' associations,³ transportation or property brokers, and export trading companies.

¹ Section 3(17) of the 1984 Act, 46 U.S.C. app. 1702(17), defines an NVOCC as "a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with the ocean common carrier."

² Section 3(19) of the 1984 Act, 46 U.S.C. app. 1702(19), defines an ocean freight forwarder as "a person in the United States that—(A) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and (B) processes the documentation or performs related activities incident to those shipments."

³ Section 3(24) of the 1984 Act, 46 U.S.C. app. 1702(24), defines a shippers' association as "a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts."

The Investigative Officer's Report in Fact Finding Investigation No. 15—*Practices of Various Entities Operating as Intermediaries for the Transportation of Goods in the United States Waterborne Commerce*, addressed the extent to which such middlemen were reselling transportation and how carriers are having difficulty determining whether an entity is indeed a shipper. The Report advised that persons were engaging in practices not contemplated by and in contravention of the 1984 Act. For example, persons other than actual shippers were joining shippers' associations and entering into service contracts. Others were acting as shippers without the benefit of a tariff on file with the Commission.

In order to address this situation, the Commission is proposing to amend its rules governing the publishing and filing of tariffs by common carriers in the foreign commerce (46 CFR part 580) and those governing service contracts (46 CFR part 581) in two respects. First, the Commission proposes to redefine the term "shipper" to include only the person who is legally responsible for payment of the ocean transportation charges. Second, the proposed rule restricts the availability of an ocean common carrier's mixed commodity rate to those persons meeting the definition of "shipper," by requiring that when a mixed commodity rate is used, the "shipper" must identify its status on such carrier's bill of lading and on service contracts. The shipper would also be required to provide the ocean common carrier with a house bill of lading, container manifest, or packing list covering the cargo which is to be assessed the mixed commodity rate or rates. In the event the "shipper" is an NVOCC, the NVOCC's FMC tariff number must appear on the ocean common carrier's bill of lading and on any service contracts to which it is a party.

Combined, the rule changes proposed in this proceeding are intended to limit the scope of those that can act as "shipper" vis-a-vis the ocean common carriers, preclude untariffed shipper operations and otherwise ensure that the statutory scheme contemplated by the Shipping Act of 1984 is preserved. Comments on the specific aspects of the proposed rule, and suggestions as to alternatives are also welcome.

The Commission is presently conducting a comprehensive review of shipper's associations and their relationship with carriers. Upon completion of this review, appropriate action, including the issuance of proposed regulations governing their

activities, if necessary, will be taken. However, it should be noted that to the extent that shippers' associations are currently acting as shippers or ocean freight forwarders, they are subject to the Commission's tariff filing and licensing regulations. Furthermore, membership in shippers' associations will be limited to "shippers" as defined in the proposed rule.

The Commission has determined that this Proposed Rule is not a "major rule" as defined in Executive Order 12291 dated February 27, 1981, because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission also finds that the rule proposed in this proceeding is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601. Section 601(2) of that Act excepts from its purview any "rule of particular applicability to rates or practices relating to such rates * * *." As the proposed rule relates to particular application of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h). Comments on the information collection aspects of the rule should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in 46 CFR Parts 580 and 581

Maritime carriers, Rates and fares, Service contracts, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 8, 9, 10 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707, 1708, 1709 and 1716, the Federal Maritime Commission proposes to amend parts 580 and 581 of the Code of Federal Regulations as follows:

PART 580—[AMENDED]

1. The authority citation for part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702-1705, 1707, 1709, 1712, 1714-1716 and 1718.

2. It is proposed to amend § 580.2 by revising paragraph (t) to read:

§ 580.2 Definitions.

(t) "Shipper" means the person who is legally responsible to pay the ocean common carrier for the transportation. Depending on the transportation arrangement, the term may include the owner of the cargo, a consignor, a consignee, or a tarified non-vessel-operating common carrier ("NVOCC"). The term does not include an agent of the shipper, an ocean freight forwarder, a broker, or a person acting as an NVOCC without a tariff on file with the Commission.

3. It is proposed to amend § 580.5 by adding a new paragraph (d)(22) to read:

§ 580.5 Tariff contents.

(d) * * *

(22) *Mixed commodity rates.* Mixed commodity rates such as, but not limited to, freight-all-kinds, household goods, and general department store merchandise, may be made available only to a "shipper," as defined by § 580.2(t), of this part or a "shipper" association" as defined by § 581.1(r) of this chapter. The shipper's status, e.g. owner of the cargo, a consignor, a consignee, NVOCC, shippers' association, must be stated on the ocean carrier's bill of lading in the shipper identification box. If the shipper is an NVOCC, the NVOCC's FMC tariff number under which service is being provided must also be shown in the shipper identification box. The shipper must also provide the ocean common carrier with either its house bill of lading, container manifest, or packing list covering all cargo listed on the ocean common carrier's bill of lading which is to be addressed the mixed commodity rate or rates.

PART 581—[AMENDED]

4. The authority citation for part 581 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714-1716 and 1718.

5. It is proposed to amend § 581.1 by revising paragraph (q) to read:

§ 581.1 Definitions.

(q) "Shipper" means the person who is legally responsible to pay the ocean common carrier for the transportation. Depending on the transportation arrangement, the term may include the owner of the cargo, a consignor, a consignee, or a tarified non-vessel-operating common carrier ("NVOCC"). The term does not include an agent of the shipper, an ocean freight forwarder, a broker, agent, or a person acting as an NVOCC without a tariff on file with the Commission.

§ 581.4 [Amended]

6. It is proposed to amend paragraph (a)(1)(v) of § 581.4 by replacing the semicolon with a period and adding the prior to the word "and":

(a) * * *

(1) * * *

(v) * * * "If one of the contract parties is an NVOCC, the NVOCC's FMC tariff number under which service is being provided must also be stated;

§ 581.5 [Amended]

7. It is proposed to amend paragraph (a)(3)(iii) of § 581.5 by replacing the semicolon with a period and adding the following:

(a) * * *

(3) * * *

(iii) * * * *Mixed commodity rates* such as, but not limited to, freight-all-kinds, household goods, and general department store merchandise, may be made available only to a shipper," as defined by § 581.1(q), or a "shippers' association" as defined by § 581.1(r). The shipper's status, e.g. owner of the cargo, a consignor, a consignee, NVOCC, shippers' association, must be stated on the ocean carrier's bill of lading in the shipper identification box. If the shipper is an NVOCC, the NVOCC's FMC tariff number under which service is being provided must also be shown in the shipper identification box. The shipper must also provide the ocean common carrier with either its house bill of lading, container manifest, or packing list covering all cargo listed on the ocean common carrier's bill of lading which is to be assessed the mixed commodity rate or rates.

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 89-23336 Filed 10-3-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 89-416, RM-6700, RM-6858]

Radio Broadcasting Services; Metropolis, Illinois, Camden and Henderson, TN**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions. The first petition, filed by Samuel K. Stratemeyer ("Stratemeyer"), licensee of WRIK(FM), Channel 252A at Metropolis, Illinois, proposes the substitution of Channel 252C2 for Channel 252A at Metropolis and modification of its license to specify operation on the higher class co-channel. The Metropolis substitution requires the substitution of Channel 240A for Channel 252A at Camden, Tennessee, and the substitution of Channel 239A for Channel 240A at Henderson, Tennessee. The second petition, filed by Valley Wide Broadcasting, Inc. ("Valley"), licensee of WRJB(FM), Channel 252A at Camden, Tennessee, proposes the substitution of Channel 252C3 for Channel 252A at Camden and modification of its license to specify operation of the higher class co-channel. The coordinates for Channel 252C2 at Metropolis are North Latitude 37-02-30 and West Longitude 88-36-00. The coordinates for Channel 240A at Camden at its current site are North Latitude 36-03-25 and West Longitude 88-06-10, and the coordinates for Channel 239A at Henderson at its current site are North Latitude 35-29-52 and West Longitude 88-42-29. The coordinates for Channel 252C3 at Camden are North Latitude 35-56-00 and 88-16-42.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Kathryn R. Schmeltzer, John Joseph McVeigh, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037-1125, (Attorneys for Samuel K. Stratemeyer).

Jerrold Miller, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033,

(Attorney for Valley Wide Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT:

Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-416, adopted September 13, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23388 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-419, RM-6822]

Radio Broadcasting Services; Bunkie, LA**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document requests comments on a petition by Owensville Communications Company proposing the substitution of Channel 282C3 for Channel 282A at Bunkie, Louisiana, and the modification of its construction permit to specify Channel 282C3 in lieu of Channel 282A. A site restriction of 11.3 kilometers (7 miles) north of the city

is required, at coordinates 31-02-56 and 92-08-34. The community could receive its first wide coverage area FM service.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Francis E. Fletcher, Jr., Esquire, Joseph P. Benkert, Esquire, Gardner, Carton & Douglas, 1001 Pennsylvania Ave., NW., Suite 750N, Washington, DC 20004 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT:

Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-419, adopted September 11, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23389 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73**[MM Docket No. 89-413, RM-6764]****Radio Broadcasting Services; Brusly, LA, and Woodville, MS****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document requests comments on a petition by Livingston Communications, Inc., proposing the substitution of Channel 241C2 for Channel 242A at Brusly, Louisiana, and modification of its construction permit for Channel 242A to specify operation on the higher class channel. In order to accomplish the substitution at Brusly, Channel 299A must be substituted for Channel 240A (vacant) at Woodville, Mississippi. The allotment of Channel 241C2 at Brusly also requires a site restriction of 27 kilometers (16.8 miles) northeast of the city, at coordinates 30-30-00 and 91-00-00.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Edward W. Hummers, Jr., Esquire, Barry Lambergman, Esquire, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-413, adopted September 11, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23390 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73**[MM Docket No. 89-415, RM-6943]****Radio Broadcasting Services; Cleveland, MS****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document requests comments on a petition filed by Carol B. Ingram, proposing the substitution of FM Channel 252C3 for Channel 295A at Cleveland, Mississippi. Petitioner also requests modification of her construction permit for Station WEZU, Channel 295A, to specify Channel 252C3. The coordinates for Channel 252C3 are 33-52-00 and 90-45-00.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carol B. Ingram, WEZU Radio, P.O. Box 73, Batesville, Mississippi 38606.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-415, adopted September 11, 1989, and released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800,

2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23391 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73**[MM Docket No. 89-414, RM-6923]****Radio Broadcasting Services; Indianola, MS****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document requests comments on a petition filed by Walter Gray Gilbert, proposing the substitution of FM Channel 245C3 for Channel 245A at Indianola, Mississippi. Petitioner also requests modification of his construction permit to specify Channel 245C3 in lieu of Channel 245A. The coordinates for Channel 245C3 are 33-31-41 and 90-39-15.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Walter Gray Gilbert, P.O. Box 1475, Clarksdale, Mississippi 38614.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-414, adopted September 11, 1989, and

released September 28, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23392 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-409, RM-6693]

Radio Broadcasting Services; Linden, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Marengo County Broadcasting, Inc., licensee of Station WDAL(FM), Linden, Alabama, seeking the substitution of FM Channel 253C1 for Channel 253C2, and modification of its license accordingly. Coordinates for this proposal are 32-10-00 and 87-40-00.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and his consultant, as follows: Marengo County Broadcasting, Inc.,

Attn: Billy G. Hogan, President, Rt. 1, Box 183, Elkmont, AL 35620 and Larry G. Fuss, Contemporary Communications, P.O. Box 4010, Opelika, AL 36803.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-409, adopted September 11, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23385 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-417, RM-6865]

Radio Broadcasting Services; Century, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ziffle Broadcasting Company Inc. requesting the substitution of Channel 286C3 for Channel 286A at Century, Florida, and modification of its license for Station WKGT(FM) to specify the higher powered channel. Channel 286C3 can be

allotted to Century in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.0 kilometers (4.4 miles) north. The coordinates for this allotment are North Latitude 31-02-03 and West Longitude 87-16-58. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 286C3 at Century will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Bradford D. Carey, Walker, Bordelon, Hamlin, Theriot & Hardy, 701 South Peters Street, New Orleans, Louisiana 70130 (Counsel for Ziffle Broadcasting Company, Inc.).

FOR FURTHER INFORMATION CONTACT:

Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-417, adopted September 13, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23386 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-418, RM-6879]

Radio Broadcasting Services; Wrens, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Val-Tel, Inc. requesting the substitution of Channel 245C3 for Channel 244A at Wrens, Georgia, and modification of its license for Station WRDW(FM) to specify the higher powered channel. Channel 245C3 can be allotted to Wrens in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.9 kilometers (5.6 miles) east, in order to avoid a shortspacing to Station WFOX, Channel 246C, Gainesville, Georgia. The coordinates for this allotment are North Latitude 33-13-20 and West Longitude 82-17-50. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Wrens or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before November 20, 1989, and reply comments on or before December 5, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: M. Scott Johnson, Catherine M. Crofer, Gardner, Carton & Douglas, 1001 Pennsylvania Avenue, NW., Suite 750-N, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-418, adopted September 13, 1989, and released September 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M

Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23387 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-20; Notice 1]

RIN 2127-AD08 and 2127-AC57

Federal Motor Vehicle Safety Standards; Seating Systems; Occupant Crash Protection; Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice seeks comments on two related petitions for rulemaking from Mr. Kenneth Saczalski and Mr. Edward Horkey which request that the National Highway Traffic Safety Administration (NHTSA) amend Standard No. 207 *Seating Systems*, Standard No. 208, *Occupant Crash Protection*, and Standard No. 209, *Seat Belt Assemblies*. Each petition focuses on an occupant's safety during rear impact. This notice specifically requests comments and data on the interaction of seat backs and safety belts in rear impacts as well as more general

information about seat performance in crashes.

DATES: Comment closing date: Comments on this notice must be received on or before December 4, 1989.

ADDRESS: Any comment on this notice should refer to the docket number and notice number and be submitted to the following: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 8:00 a.m. to 4:00 p.m.).

FOR FURTHER INFORMATION CONTACT: Dr. Richard Stombotne, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-2264.

SUPPLEMENTARY INFORMATION: This notice follows grants of two related petitions for rulemaking concerning Standard No. 207, *Seating Systems* (49 CFR 571.207), Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208), and Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209). The first petition, from Mr. Kenneth J. Saczalski of Environmental Research and Safety Technologists, Flagstaff, AZ, requests that the agency increase the seat back requirements in Standard No. 207. The second petition, from Mr. Edward J. Horkey of Horkey & Associates, Tempe, AZ, requests that the agency amend Standard No. 208 and Standard No. 209 to change the requirements related to safety belt retractors in passenger cars. The agency has consolidated these two rulemaking petitions in this notice because each petition focuses on the effect of rear impacts on vehicle occupants.

In his petition, Mr. Saczalski informed the agency that he has uncovered what he perceives to be a safety problem related to inadequate seat strength and seat back failure in rear impacts. He explained that as a vehicle safety consultant, he has investigated in the last two years four cases in which occupants suffered serious or fatal injuries as a result of rear impacts. The petitioner attributed this problem to the fact that during rear impact, the seat backs are loaded by the inertia of the occupant's upper body, a factor that the current seat back requirements do not consider. As a result, the petitioner stated that the seat back collapses, allowing the occupants to slide out from under the lap safety belt. This makes it more likely for the occupants to impact against the vehicle's interior or to be ejected.

Mr. Saczalski requested that NHTSA amend Standard No 207 as follows.

First, he petitioned that the agency reexamine the general performance requirements in Standard No. 207. Second, he requested that Standard No. 207 specify that the load must be both 20 times the weight of the seat back and 20 times the weight of the occupant. Sections S4.2 (a) and (b) of Standard No. 207 currently only require that the seat withstand 20 times the weight of the seat back. Third, he requested that Section S4.2(d)'s seat back moment criterion be increased to 56,000 inch-pounds. Section S4.2(d) currently requires a seat back to resist a moment of 3,300 inch pounds.

Mr. Horkey submitted two petitions to NHTSA related to safety belt mechanisms. The first petition stated that safety belt mechanisms currently installed in many American automobiles are ineffective in rear end collisions, and requested that the agency conduct a defect investigation. The agency denied this petition since it did not appear that there was a reasonable possibility that an order concerning the notification, correction and remedy of a defect would be issued at the conclusion of an investigation.

Mr. Horkey's second petition asked for rulemaking to change the type of safety belt mechanisms required in automobiles. He submitted additional information, including a sketch and a video, to illustrate his claim that in a rear impact, the occupant may suffer an injury caused by what he terms "the slingshot effect." (The agency notes this phenomenon is also referred to as a "rebound effect.") Mr. Horkey theorized that in a rear impact, an occupant is pushed rearward against his or her seatback, which stores the energy and then propels the occupant forward. However, after the occupant is pushed rearward by the rear impact, the vehicle deceleration sensitive emergency locking retractor (ELR) on some safety belts could move to the unlocked position if there is no tension in the belt. As a result, when the occupant is subsequently thrown forward, the occupant is more likely to strike the vehicle's interior surfaces because the belt does not restrain the occupant's forward motion if the ELR is not locked. Mr. Horkey requests that the regulations require the "use (of) the older rotary inertia reel type mechanism." Mr. Horkey reasons that his proposal "would insure holding the occupant in either direction and would not loosen or disengage if a vehicle's accelerations change during a crash."

After carefully reviewing the issues raised in the petitions, NHTSA has determined that the two petitioners'

theories concerning seat back strength, the "slingshot effect," and the effectiveness of ELRs, warrant further consideration. Therefore, on July 24, 1989, the agency decided to grant the petitions and is now requesting detailed comments and data on the issues raised in the petitions and related matters. As more information becomes available, the agency will be able to determine what appropriate measures, if any, are needed to address this situation. NHTSA emphasizes that the grant of these petitions and the issuance of this request for comments does not necessarily mean that a notice of proposed rulemaking (NPRM) will follow. In accordance with statutory criteria, NHTSA will determine whether to issue an NPRM after it evaluates the comments it receives.

Issues for Consideration

To assist in evaluating the requested changes to Standard No. 207, Standard No. 208, and Standard No. 209, the agency is interested in obtaining comments, accident data, and other information relating to the following issues.

1. In analyzing Mr. Saczalski's and Mr. Horkey's petitions, NHTSA reviewed data and studies related to the interaction of seat back strength and safety belt retractors, especially in rear impact situations. The agency notes that there are two competing schools of thought related to the proper performance of seats in rear impacts. Some safety experts, such as Mr. Saczalski, argue that the seat back requirements should be increased. This would result in stronger, stiffer seats that would be less likely to break during an impact. Other safety experts, such as Mr. Horkey, believe that the seat should be used as an energy absorber in rear impacts and that seats should collapse in a controlled manner. According to these theorists, requiring a stronger seat back would exacerbate the "slingshot effect" because a stiffer, stronger seat back stores and then releases greater amounts of energy. As a result, they contend that a stronger seat would result in more serious injuries, especially whiplash and other neck injuries.

In light of this background, NHTSA requests detailed comments about the "slingshot effect." In particular, does the "slingshot effect" provide a realistic hypothesis for a failure mode for safety belt operation in rear impacts? What are estimates of injury frequency and severity to belted occupants as a result of the "slingshot effect?" Conversely, what are estimates of injury frequency and severity to rear seat occupants,

caused by front seats collapsing rearward? Have manufacturers received complaints about the "slingshot effect" in vehicles? How is the "slingshot effect" related, if at all, to seat or seat back design, especially in relation to seat back strength requirements?

The agency is aware of studies which conclude that the "slingshot effect" is only relevant to low speed impacts, because at higher speeds (over 30 mph) the seat backs deform. The agency seeks comments concerning how different speeds at the time of rear impact affect the "slingshot effect."

2. At present, section S4.3(j) of Standard 209 requires that an ELR "shall lock before the webbing extends 1 inch when the retractor is subjected to an acceleration of 0.7g." The agency notes that ELRs were developed to overcome deficiencies with automatic locking retractors (ALRs), such as cinch up. The ELR retractor permits free movement of the webbing during non-crash conditions and can be manufactured to lock up as a result of webbing acceleration, vehicle acceleration or both. The agency notes that some foreign manufacturers include ELRs with two inertial sensing modes (i.e., "dual-mode sensing ELRs"). One mode is sensitive to webbing acceleration, and the other to vehicle acceleration. The dual-mode sensor provides fast response and lock up in the vehicle acceleration mode and also locks the webbing whenever the occupant is thrown against it. It also permits the user to test the belt locking mode by jerking on the webbing. This action causes lock up in the webbing acceleration sensing mode. Accordingly, it is possible that requiring dual mode ELRs would negate injuries caused by the "slingshot effect." NHTSA requests detailed comments about the effectiveness and costs of dual-mode ELRs.

In particular, are dual-mode ELRs compatible with other designs such as motorized automatic safety belts? In the case of motorized automatic safety belts, could the motor withdrawal rate cause reel lockup when the occupant enters the car? Are any manufacturers currently using or planning to use dual-mode ELRs in their vehicles? If so, have they observed or do they anticipate any safety benefits with these ELRs?

3. NHTSA also seeks comments related to the costs of requiring the dual-mode ELRs as compared to single-mode sensing ELRs. One domestic manufacturer informed the agency that dual-mode ELRs would cost about 30 to 40 cents per reel for each dual-mode ELR or between \$1.20 and \$1.60 per

vehicle for four reels. NHTSA requests cost estimates, especially from those manufacturers that currently use or are developing these ELRs.

4. NHTSA is concerned about consumer acceptance of different types of retractors. The agency notes that some consumers may not like the dual-mode ELRs because sudden movements could cause the belt to lock. This might cause some consumers to believe that the belts were less comfortable or more inconvenient. If a significant number of consumers had this perception, then the agency would have to factor this "cost" (i.e., lowered safety belt use) into its analysis. On the other hand, NHTSA notes that some consumers do not believe that a vehicle sensitive retractor is working properly, since they cannot lock it up by pulling rapidly on the webbing. Being able to test the belt with the dual mode retractor might help instill trust in the belt system's value in a crash. If so, this could increase belt use. Accordingly, the agency seeks comments on whether and how the use of dual-mode ELRs would affect the comfort, convenience, and use of the safety belt system. In particular, would requiring the use of dual-mode ELRs affect occupants during ingress or egress?

5. NHTSA notes that Mr. Saczalski petitioned the agency to conduct a general review of Standard No. 207's performance requirements. Accordingly, while this notice focuses on the interaction of the seat back strength requirements and safety belt retractors in rear impacts, the agency welcomes additional comments on other matters relating to seat back performance in other crash situations. What relation do the seat back performance requirements in general have to injuries in front impacts? in side impacts? in vehicle rollovers? What types of injuries are seen in side and front impact and vehicle rollover accidents that could possibly be mitigated by practical seat design modifications? Are there any

innovative designs to absorb and control energy in the side and front impacts or rollovers? From a design standpoint, how is the optimum seat strength determined? What are the seat back and seat back latch force deflection characteristics of current production seats? Are current or strengthened seat back latches effective in mitigating injuries of either front seat or rear seat occupants? What would be the increases in cost and weight for increasing seat strength to withstand a 56,000 inch pounds moment?

6. On a related topic, NHTSA has contemplated changing the measurement and evaluation of seat performance. Accordingly, it seeks comments on the following matters. How should seat performance be measured? To measure seat back and head restraint performance, should the agency adopt an instrumented dummy as used in Standard No. 208 *Occupant Crash Protection* test? Would a dynamic test that measured the response of the neck, head and chest of a Hybrid III dummy provide a realistic test procedure for a seat, the restraint system and head restraint in a rear impact? Other impacts? What type of injury criteria should we measure on a dummy in a rear impact test? Other impacts? In particular, what should the neck criteria be in a rear impact test? Would a currently produced seat pass a 30 mile per hour impact test, without "killing" the dummy? What would be objective force/deflection requirements for Standard No. 207, to define a seat failure, rather than the term "shall withstand"?

Submission of Comments

Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to

encourage commenters to detail their primary arguments in a concise fashion. If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on September 29, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-23438 Filed 10-3-89; 8:45 am]

BILLING CODE 4510-55-M

Notices

Federal Register

Vol. 54, No. 191

Wednesday, October 4, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office Of The Secretary

State of Indiana Critical Soil Erosion Cost-Share Program; Determination of Primary Purpose of Program Payments for Consolidation as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made to individuals under the Indiana Critical Soil Erosion Cost-Share Program are made primarily for the purpose of soil and water conservation and protection or restoration of the environment. This determination is in accordance with section 126 of the Internal Revenue Code of 1954, as amended. The determination permits recipients to exclude these payments from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT:

Charles C. McKee, Director, Division of Soil Conservation, Indiana Department of Natural Resources, FLX1, Purdue University, West Lafayette, Indiana, 47907, (317) 494-8383; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (202) 382-1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for

wildlife * * *." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

One of the state conservation programs is the Indiana Critical Soil Erosion Cost Share Program authorized by chapter 1, Article 3, title 13 of the Indiana Code.

The objectives of the program are: (1) To conserve and protect Indiana's soil and water resources, and (2) to protect or restore the environment by reducing soil erosion and its resulting offsite sedimentation damage.

Procedural Matters: The USDA has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Secretary has determined that this will not result in an annual effect on the economy of \$100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. An Indiana Critical Soil Erosion Cost-Share Program Primary Purpose Determination for Federal Tax Purposes, Record of Decision, has been prepared and is available upon request from the Director, Division of Soil Conservation, Indiana Department of Natural Resources, FLX1, Purdue University, West Lafayette, Indiana, 47907 or the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013. **DETERMINATION:** As authorized by section 126 of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Indiana Critical Soil Erosion Cost-Share Program. In accordance with the criteria set out in 7 CFR part 14, I have

determined that all cost-share payments made under this program are primarily for soil and water conservation and protecting or restoring the environment. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the Indiana Critical Soil Erosion Cost-Share Program.

Signed at Washington, DC, on September 21, 1989.

Clayton Yeutter,

Secretary.

[FR Doc. 89-23346 Filed 10-3-89; 8:45 am]

BILLING CODE 3410-01-M

Office of the Secretary

Commonwealth of Pennsylvania Chesapeake Bay Financial Assistance Funding Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954.

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Determination.

SUMMARY: The Secretary of Agriculture has determined that all state payments under the Pennsylvania Chesapeake Bay Financial Assistance Funding Program have been made primarily for the purpose of soil and water conservation, protecting or restoring the environment, or providing a habitat for wildlife. This determination is in accordance with Section 126 of the Internal Revenue Code of 1954, as amended. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT:

Paul O. Swartz, Director, Bureau of Soil and Water Conservation, Department of Environmental Resources, One Ararat Boulevard, Room 214, Harrisburg, Pennsylvania 17110, (717) 540-5080, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013 (202) 382-1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of

1978 and the Technical Corrections Act of 1979, 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife * * *". The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Chesapeake Bay Financial Assistance Funding Program provides financial and technical assistance to private landowners who have control of agricultural lands located in approved priority watersheds and have consented to the development of a nutrient management program (NMP) which will address critical nutrient management problems of the farm. The program is administered by the State Conservation Commission and cooperatively with Conservation Districts.

The purpose of the Financial Assistance Funding Program is to assist landowners with the cost of the installation of best management practices (BMPs). This cost share program is administered by the State Conservation Commission cooperatively with Conservation Districts and the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture. Cost share payments accomplish one or more of the following purposes:

1. Identification of nonpoint pollution sources, monitoring water quality, measuring runoff characteristics of watershed areas, and designing treatment methods for sources of nonpoint pollution.

2. Adoption and demonstration of the use of soil and water conservation management techniques through educational programs.

3. Acceleration of the installation of BMPs for landowners for the proper disposal and application of nutrients on land areas that are responsible for nonpoint source pollution.

4. Provide assistance to landowners with the installation of BMPs.

The Pennsylvania Chesapeake Bay Financial Assistance Funding Program is

authorized under the Act of December 19, 1984 (3 P.S. sections 894-864), and the Statement of Policy which provides guidance to the program is published at 25 Pa. Code chapter 83 et seq. Funding for this program is allocated through annual State appropriations which provide financial assistance to owners of agricultural land helping them install various conservation practices on their land.

Grants are given to Conservation Districts for the local administration of the program based upon detailed watershed assessments or other pertinent water quality land use data. The State Conservation Commission approves a list of eligible best management practices for cost sharing. Each Conservation District may select from this list those BMPs it will approve for cost sharing.

Costs eligible for cost sharing include, but are not limited to, any necessary approved costs incurred by the landowner to install or implement an approved BMP, such as equipment costs, material and labor, not to exceed a rate established by the Conservation District to be fair and reasonable.

Procedural Matters

The authorizing legislation and policies for the Chesapeake Bay Financial Assistance Funding Program of the Commonwealth of Pennsylvania have been carefully examined using the criteria set forth in 7 CFR part 14. The Department has concluded that the payments made under this cost share program are made to provide financial assistance to eligible persons in carrying out soil and water conservation measures, and protecting the environment.

A Chesapeake Bay Financial Assistance Funding Program, Primary Purpose Determination for Federal Tax Purposes, "Record of Decision" has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or Director, Bureau of Soil and Water Conservation, Department of Environmental Resources, One Ararat Boulevard, Room 214, Harrisburg, Pennsylvania 17110.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Pennsylvania Chesapeake Bay Financial Assistance Funding program. In accordance with the criteria set out in 7 CFR part 14, I have determined that all

cost-sharing payments made under this program are for soil and water conservation, protecting the environment, and providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the Pennsylvania Chesapeake Bay Financial Assistance Funding Program.

Signed at Washington, DC, on September 21, 1989.

Clayton, Yeutter,
Secretary.

[FR Doc. 89-23345 Filed 10-3-89; 8:45 am]

BILLING CODE 3410-01-M

Federal Grain Inspection Service

Designation Renewal of the Cairo (IL) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Cairo Grain Inspection Agency, Inc., as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act). The notice also announces the designation of Ohio Valley Grain Inspection, a neighboring official agency, to certain excepted points assigned to the Cairo agency.

EFFECTIVE DATE: November 1, 1989.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Cairo's designation terminates on October 31, 1989, and requested applications for official agency designation to provide official services within a specified geographic area in the May 1, 1989, *Federal Register* (54 FR 18559). Applications were to be postmarked by May 31, 1989. There were two applicants for designation. Cairo applied for designation renewal in the entire area

currently assigned to that agency, except for Hopkinsville Elevator Company, Inc., Hopkinsville, Kentucky, and the L&N Railroad Siding on Alternate U.S. Route 41 five miles south of Hopkinsville, both in Christian County, Kentucky. Ohio Valley Grain Inspection (Ohio Valley) a neighboring official agency, applied for designation only at those points. These facilities are located in the contiguous area currently assigned to Ohio Valley, but are exceptions to that agency's assigned geographic area. The Service announced the applicant names in the July 3, 1989, *Federal Register* (54 FR 27906) and requested comments on the applicants for designation. Comments were to be postmarked by August 17, 1989. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that (1) Cairo is able to provide official services in the geographic area for which the Service is renewing its designation; and that (2) Ohio Valley is able to provide official services to the excepted points, for which the Service is selecting it for designation. Effective November 1, 1989, and terminating October 31, 1992, Cairo is designated to provide official inspection functions in its specified geographic areas, as previously described in the May 1 *Federal Register*, with the exception of Hopkinsville Elevator Company, Inc., and the L&N Railroad Siding. Ohio Valley will provide official inspection services to these points effective November 1, 1989, and terminating March 31, 1992, when that agency's current designation terminates.

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Cairo at (618) 734-0689 and Ohio Valley at (812) 858-5444.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: September 28, 1989.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 89-23354 Filed 10-3-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Farwell (TX) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the

applicant for official agency designation in the geographic area currently assigned to William D. Prince dba Farwell Grain Inspection Company (Farwell).

DATE: Comments must be postmarked on or before November 20, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows:

TO: Lewis Lebakken.

TLX: 760351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the August 1, 1989, *Federal Register* (54 FR 31712). Applications were to be postmarked by August 31, 1989. W. D. Prince and Glenna Prince proposing to establish a new corporation, Farwell Grain Inspection, Incorporated, was the only applicant for designation in that area, and applied for the entire area currently assigned to Farwell.

This notice provides interested persons the opportunity to present their comments concerning the applicant for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the *Federal Register*, and the applicants will be informed of the decision in writing.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 28, 1989.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 89-23355 Filed 10-3-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to the Alton (MO), Grand Forks (ND), and McCrea (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specified agencies. The official agencies are Thomas P. Russell dba Alton Grain Inspection Department (Alton), Robert J. Bohlman d.b.a. Grand Forks Grain Inspection Department (Grand Forks), and John R. McCrea d.b.a. John R. McCrea Agency (McCrea).

DATE: Applications must be postmarked on or before November 3, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

All applications received will be made available for public inspection at the address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official

services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Alton, located at 3601 Vago Lane, Florissant, Mo. 63034; Grand Forks, located at 1504 State Mill Road, Grand Forks, ND, 58201; and McCrea located at 96—18th Place, Clinton, IA, 52732, were designated under the Act as official agencies on April 1, 1987, to provide official inspection functions.

The official agencies' designations terminate on March 31, 1990. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alton, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Calhoun, Jersey, and Madison (West of State Route 4 and North of Interstate 70 and 270) Counties.

The geographic area presently assigned to Grand Forks, in the State of North Dakota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the the North Dakota State line;

Bounded on the East by the North Dakota State line south to State Route 200;

Bounded on the South by State route 200 west-northwest to the western Traill County line west of U.S. Route 281; U.S. line; the southern Grand Forks and Nelson county lines; the southern Eddy county line west of U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52; U.S. Route 52 northeast to State Route 3; and

Bounded on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north to the North Dakota State line.

Exceptions to Grand Fork's assigned geographic area are the following locations inside Grand Fork's area which have been and will continue to be serviced by the following official agencies:

1. Grain Inspection, Inc.: Farmers Coop Elevator, Fessenden; Farmers Union Elevator, and Manfred Grain, both in Manfred; all in Wells County; and

2. Minot Grain Inspection, Inc.: Farmers Feed & Grain, and Farmers Union, both in Harvey, Wells County.

The geographic area presently assigned to McCrea, in the States of Illinois and Iowa, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Illinois: Carroll and Whiteside Counties.

In Iowa: Clinton and Jackson Counties.

Interested parties, including Alton, Grand Forks, and McCrea, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas are for the period beginning April 1, 1990, and ending March 31, 1993. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2967, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 23, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89-23358 Filed 10-3-89; 8:45 am]

BILLING CODE 3410-EN-M

Soil Conservation Service

Northern Drainage District Watershed

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR part 650); U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Northern Drainage District Watershed, Bolivar and Sunflower Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, Suite 1321, A. H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269-1399, telephone (601) 965-5205.

SUPPLEMENTARY INFORMATION: An environmental assessment of this federally assisted action indicates that

the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. The project concerns a plan for flood protection in the predominantly urban portion of the watershed. The planned works of improvement include approximately 23 miles of channel work, enlargement/replacement of 14 inadequate bridges/culverts, and 196 overfall and/or drop inlet pipe. Planned measures will be installed by the Soil Conservation Service as a component of the Yazoo Basin, Mississippi Flood Control Project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting L. Pete Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: September 12, 1989.

L. Pete Heard,

State Conservationist, SCS, Jackson, Mississippi.

[FR Doc. 89-23347 Filed 10-3-89; 8:45 am]

BILLING CODE 3410-16-M

CIVIL RIGHTS COMMISSION

Alaska Advisory Committee; Postponement of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission originally scheduled for October 5, 1989, from 9 a.m. to 12 noon in Anchorage, Alaska, has a new date and meeting time. The meeting will be held on November 2, 1989, from 2 p.m. to 5 p.m. The purpose and address of the meeting remain the same as previously published at 54 FR 37820 (September 13, 1989).

Persons desiring additional information should contact Committee Chairperson Daniel Alex or Philip Montez, Director of the Western Regional Division (213) 894-3437 (TDD) (213) 894-0508.

Dated at Washington, DC, September 28, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-23363 Filed 10-3-89; 8:45 am]

BILLING CODE 6335-01-M

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m., on Thursday, October 19, 1989, at the Radisson Plaza Hotel, Broadway & Vine, Lexington, Kentucky. The purpose of the meeting is to review Advisory Committee projects, discuss current civil rights issues in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/436-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 22, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-23406 Filed 10-3-89; 8:45 am]

BILLING CODE 6335-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China; Correction

September 27, 1989.

In the letter to the Commissioner of Customs, published on July 26, 1989 (54 FR 31068), the 1989 levels and sublevels, as adjusted, should be corrected as follows:

Category	Adjusted twelve-month limit
342.....	232,101 dozen.
369-L.....	2,428,987 kilograms.
410-A.....	1,508,715 square meters.
410-B.....	1,501,593 square meters.
635.....	504,994 dozen.
640.....	1,283,753 dozen.
846.....	121,821 dozen.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-23373 Filed 10-3-89; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Hong Kong

September 28, 1989.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT:

Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On August 24, 1989, the Government of the United States requested consultations with the Government of Hong Kong with respect to fabric of yarns of different color in Category 218. This request was made on the basis of the current Bilateral Textile Agreement between the Governments of the United States and Hong Kong.

If no solution is agreed upon in consultations between the two governments, the United States may request the Government of Hong Kong to limit exports in Category 218, produced or manufactured in Hong Kong and exported to the United States during 1989. The United States reserves the right to control imports at the established level.

Anyone wishing to comment or provide data or information regarding the treatment of Category 218, under the agreement with the Government of Hong Kong, or in any other respect thereof, or to comment on domestic production or availability of products included in the category, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 218. Should such a solution be reached in consultations with the Government of Hong Kong, further notice will be published in the *Federal Register*.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see *Federal Register* notice 53 FR 44937, published on November 7, 1988).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-23372 Filed 10-3-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 26, 1989.

The USAF Scientific Advisory Board Tactical Cross-Matrix Panel will meet on 24 Oct 1989 from 8:00 a.m. to 5:00 p.m. at Langley AFB, Virginia.

The purpose of this meeting is to exchange information among SAB Panel members and TAC personnel on technical developments and tactical operations issues. This meeting will involve discussions of classified defense matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-23409 Filed 10-3-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 24-25 October 1989.

Time of Meeting: 0900-1700 hours each day.

Place: Fort Sheridan, Illinois.

Agenda: The Army Science Board Subgroup on Toxic and Hazardous Waste Management will conduct its next meeting with emphasis on evaluation of the Army's program for environmental restoration and hazardous waste minimization. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7048.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-23410 Filed 10-3-89; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF EDUCATION

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant, Income Contingent Loan, and Stafford Loan Programs

AGENCY: Department of Education.

ACTION: Extension of deadline dates for requesting and submitting need analysis servicer agreements.

SUMMARY: The Secretary extends the deadline date for requesting a need analysis servicer agreement package from August 4, 1989, to October 19, 1989, to provide additional time for the servicers to request an agreement package. In addition, the Secretary extends the deadline date for submitting the need analysis servicer agreement package to the Department of Education from September 1, 1989 to November 3, 1989, to provide additional time for the

servicers to return the agreement package.

On June 27, 1989, the Secretary published in the *Federal Register* a Notice (54 FR 27100-27101) informing individuals and organizations that operate need analysis systems of the procedures the Secretary will use to certify need analysis systems for the 1990-91 award year, and of the applicable deadlines for requesting and submitting an agreement package. The purpose of this Notice is to extend the deadline dates for requesting and submitting an agreement package.

FOR FURTHER INFORMATION CONTACT:

Paula M. Husselmann or C. Lorraine Kennedy, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, SW., ROB-3, Room 4613, Washington, DC 20202-5346, Telephone (202) 732-5579.

Dated: September 26, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-23398 Filed 10-3-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Secretarial Panel for the Evaluation of Epidemiologic Research Activities for the Department of Energy; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretarial Panel for the Evaluation of Epidemiologic Research Activities

Date and Time: Thursday, October 26, 1989, 8:30 am-5:30 pm; Friday, October 27, 1989, 8:00 am-4:30 pm

Place: Chicago Marriott Hotel, Michigan/Michigan State Rooms, 540 North Michigan Avenue, Chicago, IL 60611

Contact: Steven F. Boedigheimer, Executive Director, S.P.E.E.R.A., 1000 Independence Ave., SW., Washington, DC, 20585, Telephone: (202) 586-7304

Purpose: The Panel was established to provide the Secretary with an independent evaluation of the Department of Energy's epidemiology program and the appropriateness, effectiveness, and overall quality of the Department's epidemiologic research activities.

Tentative Agenda:
Thursday, October 26, 1989

8:30 am Presentation by Dr. Richard Remington, Chairman DOE Committee on Radiation, Epidemiology Research Program, National Research Council, National Academy of Sciences

9:15 am-10:00 Presentation by Health Physics Society

10:00 am-10:45 am Presentation by DOE's Office of Environment, Safety and Health

10:45 am-11:30 am Presentation by DOE's Office of Defense Programs
Thursday, October 26, 1989

11:30 am-1:00 pm Lunch Break

1:15 pm-1:45 pm Public Comment

1:45 pm-3:00 pm Presentation by DOE's Office of Energy Research

3:00 pm-5:30 pm Work Session

Friday, October 27, 1989

8:00 am-9:00 am Presentation on Comprehensive Epidemiological Data Resource Project (DOE's Office of Energy Research)

9:00 am-9:30 am Public Comment

9:30 am-11:30 am Invited Testimony and Work Session

11:30 am-1:00 pm Lunch Break

1:00 pm-4:30 pm Invited Testimony and Work Session

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairperson's judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Director at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E-190, Forrestal Building, 1000 Independence Ave, SW., Washington, DC between 9:00 am and 4:00 pm, Monday through Friday except Federal holidays.

Issued: Washington, DC, on September 28, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-23433 Filed 10-3-89; 8:45 am]

BILLING CODE 6450-01-M

ENERGY INFORMATION ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information
Administration, Energy.

ACTION: Notice of requests submitted to
the Office of Management and Budget
for review.

SUMMARY: The Energy Information
Administration (EIA) has submitted the
energy information collection(s) listed at
the end of this notice to the Office of
Management and Budget (OMB) for
review under provisions of the
Paperwork Reduction Act (Public Law
96-511, 44 U.S.C. 3501 et seq.).

The listing does not include
information collection requirements
contained in new or revised regulations
which are to be submitted under section
3504(h) of the Paperwork Reduction Act,
nor management and procurement
assistance requirements collected by the
Department of Energy (DOE).

Each entry contains the following
information: (1) The sponsor of the
collection (the DOE component or
Federal Energy Regulatory Commission
(FERC)); (2) Collection number(s); (3)
Current OMB docket number (if
applicable); (4) Collection title; (5) Type
of request, e.g., new, revision, or
extension; (6) Frequency of collection;
(7) Response obligation, i.e., mandatory,
voluntary, or required to obtain or retain
benefit; (8) Affected public; (9) An
estimate of the number of respondents
per report period; (10) An estimate of the
number of responses annually; (11) An
estimate of the average hours per
response; (12) The estimated total
annual respondent burden; and (13) A
brief abstract describing the proposed
collection and the respondents.

DATES: Comments must be filed within
30 days of publication of this notice. If
you anticipate that you will be
submitting comments, but find it difficult
to do so within the period of time
allowed by this notice, you should
advise the OMB DOE Desk Officer listed
below of your intention to do so as soon
as possible. The Desk Officer may be
telephoned at (202) 395-3084. (Also,
please notify the EIA contact listed
below.)

ADDRESS: Address comments to the
Department of Energy Desk Officer,
Office of Information and Regulatory
Affairs, Office of Management and
Budget, 726 Jackson Place NW.,
Washington, DC 20503. (Comments
should also be addressed to the Office
of Statistical Standards at the address
below.)

*For Further Information and Copies of
Relevant Materials Contact:* Jay
Casselberry, Office of Statistical
Standards (EI-70), Energy Information
Administration, M.S. 1H-023, 1000
Independence Avenue SW.,
Washington, DC 20585. Mr. Casselberry
may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The
energy information collection submitted
to OMB for review was:

1. Federal Energy Regulatory
Commission
2. FERC-80
3. 1902-0106
4. Licensed Hydropower Development
Recreation Report
5. Extension
6. Quadrennial reporting
7. Mandatory
8. Businesses or other for profit,
Individuals or households, Farms
9. 300 respondents
10. 300 responses annually
11. The estimated average hours per
response for each of the respondents
is 5 burden hours.
12. The estimated total reporting hours
are 1,500.
13. Part I, Section 10a of the Federal
Power Act requires that a licensee
submit to the Commission for
approval, plans, maps and
specifications which will present a
comprehensive plan for improving or
developing a waterway or waterways
for beneficial uses, including
recreation.

Authority: Sec. 5(a), 5(b), 13(b), and 52,
Public Law No. 93-275, Federal Energy
Administration Act of 1974, as amended, 15
U.S.C. 764(a), 764(b), 772(b), and 790a.

Yvonne M. Bishop,

*Director, Statistical Standards, Energy
Information Administration.*

[FR Doc. 89-23434 Filed 10-3-89; 8:45 am]

BILLING CODE 6450-01-M

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information
Administration, DOE.

ACTION: Notice of requests submitted for
review by the Office of Management
and Budget.

SUMMARY: The Energy Information
Administration (EIA) has submitted the
energy information collection(s) listed at
the end of this notice to the Office of
Management and Budget (OMB) for
review under provisions of the
Paperwork Reduction Act (Public Law
96-511, 44 U.S.C. 3501 et seq.).

The listing does not include
information collection requirements

contained in new or revised regulations
which are to be submitted under section
3504(h) of the Paperwork Reduction Act,
nor management and procurement
assistance requirements collected by the
Department of Energy (DOE).

Each entry contains the following
information: (1) The sponsor of the
collection (the DOE component or
Federal Energy Regulatory Commission
(FERC)); (2) Collection number(s); (3)
Current OMB docket number (if
applicable); (4) Collection title; (5) Type
of request, e.g., new, revision, or
extension; (6) Frequency of collection;
(7) Response obligation, i.e., mandatory,
voluntary, or required to obtain or retain
benefit; (8) Affected public; (9) An
estimate of the number of respondents
per report period; (10) an estimate of the
number of responses annually; (11) An
estimate of the average hours per
response; (12) The estimated total
annual respondent burden; and (13) A
brief abstract describing the proposed
collection and the respondents.

DATES: Comments must be filed within
30 days of publication of this notice. If
you anticipate that you will be
submitting comments, but find it difficult
to do so within the period of time
allowed by this notice, you should
advise the OMB DOE Desk Officer listed
below of your intention to do so as soon
as possible. The Desk Officer may be
telephoned at (202) 395-3084. (Also,
please notify the EIA contact listed
below.)

ADDRESS: Address comments to the
Department of Energy Desk Officer,
Office of Information and Regulatory
Affairs, Office of Management and
Budget, 726 Jackson Place, NW.,
Washington, DC 20503. (Comments
should also be addressed to the Office
of Statistical Standards at the address
below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:

Jay Casselberry, Office of Statistical
Standards (EI-70), Energy Information
Administration, M.S. 1H-023, 1000
Independence Avenue, SW.,
Washington, DC 20585. Mr. Casselberry
may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The
energy information collection submitted
to OMB for review was:

1. Energy Information Administration
2. EIA-213, 412, 759, 826, 860, and 861
3. 1905-0129
4. Electric Power Surveys
5. Revision—A Federal Register notice
(54 FR 14381, April 11, 1989), outlined
proposed changes to the Electric
Power Surveys, and requested
comments. Since that time, a new

schedule, "Demand Side Management Information," containing six questions was added to the EIA-861. The demand side management information will fill a gap in data collected by the EIA, and will be useful for policy makers and analysts in designing and managing Federal, State and electric utility conservation programs.

6. Monthly and Annually
7. Mandatory
8. State or local governments, Businesses or other for profit, and Federal agencies or employees
9. 7,150 respondents
10. 21,450 responses annually
11. The estimated average hours per response for each of the respondents is 3.9 burden hours.
12. The estimated total reporting hours are 82,783.
13. The Electric Power surveys collect information on capacity, generation, fuel consumption, receipts and stocks, prices, electric rates, typical electric bills, construction costs, operating income and revenue of electric utility companies. Data are published in various EIA reports. Respondents are primarily electric utilities.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93-275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, September 28, 1989.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 89-23435 Filed 10-3-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP89-50-000]

Oklahoma State Corporation Commission, Section 102 NGPA Determination, Bracken Exploration Company, Van Winkle No. 1-5 Well FERC No. JD 83-34695; Petition to Reopen and Vacate Affirmative Well Category Determination

September 27, 1989

On July 18, 1989, the Oklahoma Corporation Commission (Oklahoma) filed with the Federal Energy Regulatory Commission (Commission) an order which vacates an affirmative determination issued April 25, 1983, concerning a new onshore well application by the Bracken Exploration Company (Bracken) under section 102 of the Natural Gas Policy Act of 1978.¹ The

order is being treated as a petition to reopen and vacate Bracken's Van Winkle No. 1-5 well in the C SW/4 NW/4, Section 5, Township 18N, Range 15W, Dewey County, Oklahoma. According to Oklahoma, the determination must be vacated because Bracken's well does not qualify as a new onshore well in view of the fact that a marker is well located within 2.5 miles.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the Federal Register, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or .211 (1982)). All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell,
Secretary.

[FR Doc. 89-23244 Filed 10-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-239-000]

Boundary Gas, Inc.; Proposed Changes in FERC Gas Tariff

September 27, 1989.

Take notice that on September 21, 1989, Boundary Gas, Inc. ("Boundary") tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, First Revised Tariff Sheet Nos. 3, 4, 8, 14, 18-22, 35, 37, 40, 41 and 43 to supersede Original Tariff Sheet Nos. 3, 4, 8, 14, 18-22, 35, 37, 40, 41 and 43.

Boundary states that the purposes of this filing are: (i) To provide for billing by and payment to Boundary's supplier, TransCanada PipeLines Limited ("TransCanada"), in United States dollars; (ii) to reflect a change in the expiration date of the Sales Agreements between Boundary and its Repurchasers from November 1, 1996 to January 15, 2003; (iii) to implement a bookkeeping adjustment to allow one Boundary Repurchaser to pay its Gas Research Institute surcharge directly to the FERC rather than through Boundary; and, (iv) to reflect the Connecticut Light and Power Company's transfer of all of its interests, rights and obligations in the Boundary project to Yankee Gas Service Company.

The revised tariff sheets are proposed to become effective on November 1, 1989.

Copies of the filing have been served upon each of the Boundary Repurchasers and their respective state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-23357 Filed 10-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-240-000]

Northern Natural Gas Company; Filing

September 27, 1989.

Take notice that on September 21, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Substitute Fourth Revised Sheet No. 52f.3

Original Sheet No. 52f.3a

The proposed effective date is October 20, 1989. Northern proposes to delete from the presently effective tariff the following sentence contained in section 5(b) of Rate Schedule FT-1:

For all requests other than priority requests, the effective date shall be the date of execution by Shipper of the FT-1 Firm Transportation Service Agreement."

Northern states that in response to the concerns of Shippers on Northern's system, Northern is proposing to change its policy to allow in a nondiscriminatory manner Shippers to request service under Rate Schedule FT-1 230 days in advance and execute firm Service Agreements prior to the proposed effective date thereof, except where facilities are required to be constructed, or where Shipper is required to give Notice of Termination

¹ 15 U.S.C. 3301-3432 (1982).

under a presently effective contract. Northern states that this will allow advance planning by prospective Shippers, provide assurance that the firm transportation service will be available when required without necessitating the payment of reservation fees before the service is actually required or can be utilized, and remove the restrictions on Shippers' options and increase competition in the transportation service business.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Motion to Intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23358 Filed 10-3-89; 8:45 am]

BILLING CODE 6717-01-M

Columbia Gas Transmission Corporation; Proposed Changes in FERC Gas Tariff

[Docket No. RP89-116-002]

September 27, 1989.

Take notice that on September 21, 1989, Columbia Gas Transmission Corporation (Columbia Transmission) tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

One hundred and thirty-eighth Revised Sheet No. 16

Twenty-sixth Revised Sheet No. 16A2

The foregoing revised tariff sheets bear an issue date of September 21, 1989 and a proposed effective date of October 1, 1989.

The revised filing is being made pursuant to the Commission's Order issued April 28, 1989 in these proceedings. In this regard, Columbia's currently pending One hundred and thirty-seventh Revised Sheet No. 16 and Twenty-fifth Revised Sheet No. 16A2 are being revised to reflect the volumetric surcharge proposed in Columbia's March 31, 1989 filing. Columbia further requests that the Commission permit the

tariff sheets to become effective November 1, 1989, instead of October 1, 1989. Columbia is hopeful that the Commission will approve the Offer of Settlement filed June 29, 1989 in Docket No. RP86-168, *et al.*, before the proposed effective date of November 1, 1989. In that event, Columbia would withdraw its rate filing at Docket No. RP89-116-000. Thus, Columbia would avoid being required to refund, almost immediately, any amounts collected under Docket No. RP89-116-000.

Copies of the filing were served by the company upon each of its wholesale customers, interested state commissions and to each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 4, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 23359 Filed 10-3-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee

Date & Time: Saturday, October 14, 1989 from 7:30 p.m. to 10:00 p.m.; Sunday, October 15, 1989 from 8:30 a.m. to 12:00 Noon

Place: Scripps Room, Asilomar Conference Center, Pacific Grove, California

Contact: John Erskine, Division of Nuclear Physics, U.S. Department of Energy, Washington, DC 20545

Purpose of Committee: To advise the Department of Energy and the National Science Foundation on the scientific

priorities within the field of basic nuclear science research.

Tentative Agenda:

- Report on the budgets and status of the NSF nuclear physics program.
- Report on the budgets and status of the DOE nuclear physics program.
- Final discussion of the 1989 Long Range Plan for Nuclear Science.
- Public comment period.

Public Participation: The meeting is open to the public. The Chairperson of the committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact John Erskine at the address or telephone number listed above.

Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 28, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-23436 Filed 10-3-89; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Final Environmental Impact Statement Availability; Proposed Charlie Creek-Belfield 345-KV Transmission Line Project, North Dakota

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Availability, Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), Western Area Power Administration (Western), has issued for review a final environmental impact statement (EIS) for the proposed Charlie Creek-Belfield 345-kilovolt (kV) Transmission Line Project in North Dakota (DOE/EIS-0134-F). The final EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality regulations (40 CFR 1500-1508), and DOE guidelines for compliance with NEPA (52 FR 47662).

DATE: Written responses to the final EIS are due no later than November 3, 1989.

FOR FURTHER INFORMATION OR COPIES OF THE FINAL EIS CONTACT:

Mr. James D. Davies, Area Manager,
Billings Area Office, Western Area
Power Administration, P.O. Box 35800,
Billings, MT 59107-5800, (406) 657-
6532

Mr. Gary W. Frey, Director of
Environmental Affairs, Western Area
Power Administration, P.O. Box 3402,
Golden, CO 80401, (303) 231-1527.

SUPPLEMENTARY INFORMATION: In June 1988, Western filed the draft EIS for the Charlie Creek-Belfield 345-kV Transmission Line Project with the Environmental Protection Agency (EPA). The EPA published a Notice of Availability in the *Federal Register* on June 24, 1988 (53 FR 23791). The comment period on the draft EIS ended on August 8, 1988. The final EIS contains a comprehensive summary of the draft EIS, copies of comments received on the draft EIS and Western's responses, errata and changes to the draft EIS, and other information. The draft and final EISs are intended to be reviewed together.

Western proposes to construct, operate, and maintain approximately 40.9 miles of new 345-kV transmission line which would interconnect the existing Antelope Valley Station (AVS)-Charlie Creek 345-kV Transmission Line in southern McKenzie County with the Dawson County-Dickinson 230-kV Transmission Line near the town of Belfield in Stark County, North Dakota. The northern terminus of the new line would be the existing Charlie Creek Substation, and the southern terminus would be a new substation near Belfield, North Dakota. The electrical needs of the Charlie Creek-Williston area are presently served by the AVS-Charlie Creek 345-kV line and several 115-kV transmission lines from Garrison, Tioga, Wolf Point, and Richland. Distribution to consumers is provided by McKenzie Electric Cooperative and West Plains Electric Cooperative. The need for additional transmission capacity into the area has been demonstrated by operational experience and power system simulation studies. Any outage of the AVS-Charlie Creek transmission line causes severe low voltages, facility overloads, and possible loss of electric service to customers in the Charlie Creek-Williston area. If the Charlie Creek-Belfield transmission line is not constructed, future system voltages and facility loadings will be unacceptable during both outage and system intact conditions.

The proposed project will provide improved service to area loads, improve

system reliability, contribute to energy conservation, and provide flexibility for future expansion of the transmission system, should it become necessary. Alternatives considered include no action, energy conservation, other generation sources, other transmission systems and technologies, and the proposed action with routing and design alternatives. Unavoidable adverse effects of the proposed action would be construction related impacts, primarily on visual resources and land use.

The final EIS was prepared in compliance with all applicable regulations. Copies have been distributed to appropriate Federal, State, and local agencies; elected State officials; Boards of County Commissioners; and interested groups and individuals. Copies are maintained for public inspection at Western offices in Billings, Montana, and Golden, Colorado, and the Dickinson Public Library at Dickinson, North Dakota. Copies of the draft and final EISs are available to the public upon request from these Western offices.

Interested agencies, organizations, and individuals are encouraged to review the final EIS for adequacy, completeness, and accuracy. Any responses should be sent to Mr. James D. Davies, Area Manager, at the address given above. Responses received after the review period may not be considered in Western's decision making process.

Issued at Golden, Colorado, September 25, 1989.

William H. Clagett,
Administrator.

[FR Doc. 89-23437 Filed 10-3-89; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION**Public Information Collection Requirement Submitted to the Office of Management and Budget for Review**

September 28, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20073, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget,

Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

Title: Basic Signal Leakage Performance Report.

Form No.: FCC 320.

Action: New collection.

Respondents: Business (including small business).

Frequency of Response: Annually.

Estimated Annual Burden: 27,000 Responses, 20 hours each (average).

Needs and Uses: Filing is required of cable television system operators who use frequencies in the bands 108-137 and 225-400 MHz. The data is used to ensure the safe operation of aeronautical and marine radio services, and to monitor for compliance of cable aeronautical usage which will minimize future interference to these safety of life services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-23393 Filed 10-3-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY**Agency Information Collection Submitted to the Office of Management and Budget for Clearance**

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 USC chapter 35).

Type: Extension of 3067-0141.

Title: Reimbursement for Cost of Firefighting on Federal Property.

Abstract: The Federal Emergency Management Agency (FEMA) shall reimburse local fire departments, in accordance with federal regulations 44 CFR 151, for certain costs for fighting fires occurring on federal properties, including federally owned offices, bases, installations, buildings, forests, or other real federal property holdings. Reimbursement is available if the fire department has sustained costs above normal operating expenses.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 192.

Number of Respondents: 8

Estimated Average Burden Hours Per Response: 6

Frequency of Response: Other. Claims are submitted within 90 days of occurrence of fire.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: August 14, 1989.

Wesley C. Moore,

Director Office of Administrative Support.

[FR Doc. 89-23417 Filed 10-3-89; 8:45 am]

BILLING CODE 6718-01-M

North Carolina; Major Disaster and Related Determinations

[FEMA-844-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA-844-DR), dated September 25, 1989, and related determinations.

DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT:

Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated September 25, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from Hurricane Hugo on September 21-22, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Public Law 93-288, as amended by Public Law 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

That time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas P. Credle of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster: The counties of Gaston, Lincoln, Mecklenburg, and Union for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 89-23418 Filed 10-3-89; 8:45 am]

BILLING CODE 6718-02-M

South Carolina; Amendment to Notice of a Major Disaster Declaration

[FEMA-843-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA-843-DR), dated September 22, 1989, and related determinations.

DATED: September 26, 1989.

FOR FURTHER INFORMATION CONTACT:

Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of South Carolina, dated September 22, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of

September 22, 1989: The counties of Calhoun, Clarendon, Florence, Lee, and York for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-23419 Filed 10-3-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION**Agreement Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011251.

Title: IGSL/UAL Westbound/Eastbound Space Charter Agreement.

Parties: Interglobal Shipping Company Limited ("IGSL"), Universal Africa Lines N.V. (N.A.) ("UAL").

Synopsis: The proposed agreement would permit IGSL to charter space aboard vessels owned or operated by UAL in the trade between United States Atlantic and Gulf ports and ports in Nigeria.

By Order of the Federal Maritime Commission.

Dated: September 28, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-23335 Filed 10-3-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM**Agency Forms under Review; Background**

September 27, 1989.

Notice is hereby given of final approval of proposed information

collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)
OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3203, Washington, DC 20503 (202-395-7340).

Final approval under OMB delegated authority of the extension, without revision, of the following reports

1. *Report title:* Consolidated Financial Statements for Bank Holding Companies; Parent Company Only Financial Statements for Bank Holding Companies.

Agency form numbers: FR Y-9C, FR Y-9LP, FR Y-9SP.

OMB Docket number: 7100-0128.

Reporters: Bank holding companies.

Report	Number of respondents	Frequency	Avg. hours per response
FR Y-9C and Y-9LP: For bank holding companies with total consolidated assets of \$150 million or more.	935	Quarterly ...	25.25
For bank holding companies with consolidated assets of less than \$150 million but which have more than one subsidiary bank.	449	Quarterly ...	14.25
FR Y-9SP	4,501	Semiannually.	3

No significant effect on small businesses is affected.

General description of report:

These reports are required by law [12 U.S.C. § 1844(b) and (c)] and are not given confidential treatment.

These reports are the source of information for the Federal Reserve's

surveillance function in its ongoing monitoring of the financial condition of bank holding companies.

2. *Report title:* Combined Financial Statement of Nonbank Subsidiaries of Bank Holding Companies; Annual Supplement to the Combined Financial Statement of Nonbank Subsidiaries of Bank Holding Companies.

Agency form number: FR Y-11Q, FR Y-11AS.

OMB Docket number: 7100-0244.

Reporters: Bank holding companies.

Annual reporting hours: 4,380.

Report	Number of respondents	Frequency	Avg. hours per response
FR Y-11Q	292	Quarterly	2.5
FR Y-11AS	292	Annually	5.0

No significant effect on small businesses is expected.

General description of report:

These reports are required by law [12 U.S.C. 1844(c)] and are not given confidential treatment.

As part of the Federal Reserve System's surveillance function, these reports collect financial data on combined nonbank subsidiaries of bank holding companies with total consolidated assets of \$1 billion or more, and on bank holding companies with total consolidated assets of at least \$150 million but less than \$1 billion and that have material nonbanking activities.

Final approval under OMB delegated authority of the implementation of the following report

Report title: Reports of Medium-Term Note Issuance.

Agency form number: FR 2600m, 2600q, and 2600s.

OMB Docket number: 7100-0245.

Frequency: Monthly or quarterly or semiannually.

Reporters: U.S. corporations.

Annual reporting hours: 49.

Estimated average hours per response: 0.083.

Number of respondents: 182.

Small businesses are not affected.

General description of report:

This information collection is voluntary (12 U.S.C. 225a and 353) and is given confidential treatment [5 U.S.C. 552(b)(4)].

These reports will collect monthly balances of corporate medium-term note issues. Medium-term notes are interest-bearing noncallable corporate obligations with a maturity greater than 270 days but generally less than 10 years. The data will be used to improve

the estimates of corporate securities issues issued and outstanding.

Board of Governors of the Federal Reserve System, September 27, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-23369 Filed 10-3-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89G-0384]

Genencor, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Genencor, Inc., has filed a petition (GRASP 9G0352) proposing that chymosin derived from the fermentation of a genetically modified *Aspergillus niger* var. *awamori* be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Comments by December 4, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Eric L. Flamm, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409 (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 9G0352) has been filed by Genencor, Inc., 180 Kimball Way, South San Francisco, CA 94080, proposing that chymosin derived by fermentation from *Aspergillus niger* var. *awamori* genetically modified to contain and express a prochymosin gene be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in 21 CFR 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS

affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Interested persons may, on or before December 4, 1989, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 22, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-23378 Filed 10-3-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (46 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 54 FR 25907-08, June 20, 1989) is amended to reflect the following changes within the Center for Infectious Diseases: (1) Revision of the functional statement for the Office of the Director; (2) establishment of the Office of Program Resources within the Office of the Director; (3) establishment of the Arctic Investigations Program; (4) revision of the functional statement for the Office of Scientific Services and establishment as the Scientific Resources Program; (5) revision of the functional statement for the Sexually Transmitted Diseases Laboratory Program and establishment as the Division of Sexually Transmitted Diseases Laboratory Research; (6)

revision of the functional statement for the AIDS Program and establishment as the Division of HIV/AIDS; (7) revision of the functional statement for the Division of Host Factors and title change to Division of Immunologic, Oncologic, and Hematologic Diseases; (8) revision of the functional statement for the Division of Parasitic Diseases; (9) revision of the functional statement for the Division of Vector-Borne Viral Diseases and title change to Division of Vector-Borne Infectious Diseases; and (10) revision of the functional statement for the Division of Viral Diseases and title change to Division of Viral and Rickettsial Diseases.

Section HC-B, Organization and Functions, is hereby amended as follows:

Under *Office of the Director (HCR1)*, substitute the word "program" for "support" in item (4); delete items (5) and (6); and renumber items (7) through (9) as (5) through (7) respectively.

After the heading and statement for the *Office of Administrative Services (HCR13)*, insert the following:

Office of Program Resources (HCR14).

The Office of Program Resources provides support to CID staff in carrying out the mission of prevention and control of infectious diseases of public health importance. To do this, the Office (1) coordinates information resources by exercising review and approval authority for computer, word processing, and telecommunication equipment; develops CID information resources management strategic plans; plans and develops CID-wide information systems for disease surveillance, epidemiologic investigations, reference diagnostic services, and applied research; assures that training, consultative services, and software systems are available CID-wide; (2) maintains liaison with other CDC components, Federal agencies, and international organizations, providing administrative and consultative support for bilateral and multilateral agreement activities, and coordinates the activities of foreign visitors at CID, providing for orientation and short-term training when appropriate; (3) coordinates budget initiative submissions and preparation of the infectious disease part of the CDC budget briefing document, manages the CID project tracking system, consolidates and prepares program review documents, assists in the analysis of infectious disease programs and development of proposed legislation, tracks CID's progress toward program objectives, and maintains liaison with other program planning offices in CDC; (4) provides policy clearance and editorial assistance in the preparation of scientific articles and

other documents for publication or presentation; assists with bibliographic searches; secures necessary clearance for publications from the Office of Management and Budget; maintains databases of manuscripts and published works by CID staff; provides training in various aspects of publishing and presenting science to different audiences; assists with conference planning; designs, prepares, and facilitates clearance for health information pamphlets and brochures; provides for and promotes usage of state-of-the-art graphics; provides liaison with the scientific information offices of other components of CDC; (5) provides staff services and coordination for the CID Advisory Council, arranging meetings and preparing and distributing briefing information and minutes; (6) provides liaison with other components of CDC in the areas of human subject research protocol clearance, assurance of confidentiality, Privacy Act, surveillance issues, and ethical and policy review of CID scientific projects and activities.

Arctic Investigations Program (HCR1).

(1) Conducts surveillance of diseases and conditions that impact the health of Arctic residents, particularly Alaskan Natives; (2) designs and conducts epidemiologic studies to investigate the causes and risk factors for diseases among residents of the Arctic and sub-Arctic, and conducts long-term studies to determine sequelae of various etiologic agents; (3) conducts laboratory research to evaluate existing laboratory tests, modifies methods as needed to apply the technology in the Alaskan health-care setting, and develops new methods for diagnosis, treatment, and follow-up of health problems; (4) designs and implements studies to evaluate strategies for control of health problems in the Arctic and among small, widely scattered populations in collaboration with the Indian Health Service, State of Alaska, Native Health Corporations, etc.; (5) provides epidemiologic, statistical, computer, and laboratory consultation to the Indian Health Service, other health providers, and public and private agencies and assists in developing guidelines for disease prevention and control applicable to Arctic residents; (6) disseminates information on problems of particular import for residents of the Arctic and sub-Arctic; (7) provides training and technological assistance in epidemiology, statistics, and laboratory methodology to health-care personnel working in the Arctic or planning to conduct research; (8) participates in the Circumpolar Health Symposium and

other international collaborative efforts to improve the health of all circumpolar populations; (9) as the predominate Federal agency conducting health research in the Arctic, provides local input as needed to the Interagency Arctic Research and Policy Committee, Arctic Research Commission, and National Science Foundation as established under the U.S. Arctic Research and Policy Act of 1984.

Delete in their entirety the titles and statements for the *Office of Scientific Services (HCR15)* and the *AIDS Program (HCRK)* and substitute the following:

Division of HIV/AIDS (HCRK). (1) Conducts national surveillance of infectious diseases and other illnesses associated with human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), and sentinel surveillance of HIV infection; (2) conducts national and international surveillance, epidemiologic and laboratory investigations, and studies to determine risk factors and transmission patterns of HIV/AIDS; (3) develops recommendations and guidelines on the prevention and control of HIV/AIDS; (4) evaluates prevention and control activities in collaboration with other CDC components; (5) provides epidemic aid, epidemiologic and surveillance consultation, and financial assistance for HIV/AIDS surveillance activities to State and local health departments; (6) provides consultation to other PHS agencies, medical institutions, and private physicians; (7) provides information to the scientific community through publications and presentations; (8) conducts laboratory investigations and studies of the syndrome and the retrovirus associated with its cause; (9) develops and evaluates laboratory methods and procedures for the isolation, characterization, pathogenesis, and serodiagnosis of HIV; (10) provides reference laboratory services and assists in standardizing and providing reference reagents; (11) assists in providing training to national and international public health laboratorians; (12) serves as the World Health Organization (WHO) Collaborating Center on HIV/AIDS for epidemiology, surveillance, and laboratory consultation.

Scientific Resources Program (HCRL). (1) Provides animals, animal blood products, glassware, mammalian tissue cultures, microbiological media, special reagents, and other laboratory materials in support of research and service activities to CID laboratories and other CDC organizations; (2) installs,

fabricates, modifies, services, and maintains laboratory equipment used in the research and service activities of CDC; (3) develops and implements applied research programs to expand and enhance the use of animal models necessary to support research and diagnostic programs and to improve breeding and husbandry procedures; (4) conducts both basic and applied research in cell biology and in the expansion of tissue culture technology as a research and diagnostic tool for infectious disease activities; (5) provides services for CID investigators in protein and DNA synthesis and sequencing; (6) provides clinical and anatomic veterinary pathology services to attending veterinarians and investigators who use laboratory animals; (7) for reagents prepared at CDC, maintains a computerized inventory; provides dispensing, lyophilization, capping, and labeling; and retrieves from storage and ships to requesters; (8) provides support for liquid nitrogen freezers; (9) provides consultation and liaison with other components of CDC and national and international research and professional organizations; (10) provides technical expertise and assistance in professional intramural and extramural training activities; (11) administratively and technically supports the CDC Animal Policy Board and the Atlanta Area Animal Care and Use Committee.

After the heading and statement for the *Hospital Infections Program (HCRM)*, delete in its entirety the title and statement for the *Sexually Transmitted Diseases Laboratory Program (HCRN)* and substitute the following:

Division of Sexually Transmitted Diseases Laboratory Research (HCRN). (1) Performs research and development on the sexually transmitted diseases (STDs), including gonorrhea, syphilis, chancroid, donovanosis, bacterial vaginosis, and chlamydial and mycoplasmal infections; conducts or participates in clinical, field, and laboratory trials to develop, evaluate, and improve laboratory methods and materials used in the diagnosis of STDs; and conducts research on the other treponematoses; (2) serves as the CID focus for coordinating studies and issuing recommendations and guidelines on laboratory aspects of STDs; (3) provides reference/diagnostic services for STDs to State and local health departments, other Federal agencies, and national and international health organizations; (4) collaborates with the Center for Prevention Services on epidemiologic and clinical studies of

STDs; (5) collaborates on development and evaluation of immunizing agents and the role of protective immunity in the disease process; (6) provides consultation and liaison with other components of CID and CDC, clinical and public health laboratories, and national and international health organizations; (7) provides intramural and extramural technical expertise and assistance in professional training and proficiency testing activities; (8) serves as appropriately designated national and international reference centers for STDs.

After the heading and statement for the *Division of Bacterial Diseases (HCRP)*, delete in its entirety the title and statement for the *Division of Host Factors (HCRQ)* and substitute the following:

Division of Immunologic, Oncologic, and Hematologic Diseases (HCQR). (1) Conducts surveillance, investigations, and studies with respect to immunologic, oncologic, and hematologic disorders associated with or occurring as a consequence of infectious disease; (2) conducts research on the role of infectious agents in the production of cancers and other perturbations of cell growth and differentiation; (3) conducts research and collaborates on development and evaluation of immunizing agents and the role of protective immunity in the disease process; (4) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methodologies and material used for rapid accurate diagnostic tests; (5) provides epidemic aid and epidemiologic consultation, upon request, to State and local health departments, other Federal agencies, and national and international health organizations; (6) provides reference/diagnostic services for selected immunologic, oncologic, hematologic, and pathologic determinations to other components of CDC and to State and local health departments, other Federal agencies, and national and international health organizations; (7) obtains and distributes experimental vaccines and drugs, antisera and antitoxins, skin test antigens and immune globulins to prevent and control laboratory infections and to prevent or minimize disease in particular groups; (8) develops and provides reference materials to national and international scientists for use in research, diagnosis, and training; (9) provides immunologic, hematologic, and oncologic consultation and liaison with other components of CID and CDC, clinical and public health

laboratories, and national and international health organizations; (10) provides scientific and technical assistance to other CID components when the work requires unique expertise or specialized equipment not otherwise available; (11) provides intramural and extramural technical expertise and assistance in professional training and proficiency testing activities; (12) serves as appropriately designated national and international reference centers for immunologic, oncologic, and hematologic disorders, pathological conditions and related technologies; (13) serves as World Health Organization (WHO) Collaborating Center for Human Immunoglobulin Research and Reference Reagents.

After the heading and statement for the *Division of Mycotic Diseases (HCRR)*, delete in its entirety the functional statement for the *Division of Parasitic Diseases (HCRS)* and substitute the following:

(1) Conducts surveillance, investigations, and studies of parasitic diseases to define disease etiology, mode of transmission, and populations at risk and to develop effective methods for diagnosis, prevention, and control; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methodologies and materials and therapeutic practices used or rapid and accurate diagnosis and treatment of parasitic diseases; (3) collaborates with the Division of Vector-Borne Infectious Diseases in providing training in the epidemiology and control of vector-borne diseases; (4) provides epidemic aid and epidemiologic consultation, upon request, to State and local health departments, other Federal agencies, and national and international health organizations; (5) provides reference/diagnostic services for parasitic diseases to State and local health departments, other Federal agencies, and national and international health organizations; (6) conducts a program of research and development in the biology, ecology, host-parasitic relationships, and control of vectors of arthropod-borne parasitic diseases including development, application, and analysis of pesticides for vector control; (7) conducts laboratory studies of selected parasitic infections, emphasizing animal in vitro model systems for parasitic relationships, chemotherapy, and immunology, to develop effective methods for diagnosis, prevention, and control; (8) conducts research and collaborates on development and evaluation of

immunizing agents and the role of protective immunity in the disease process; (9) provides scientific and technical assistance to other components when the work requires unique expertise or specialized equipment not available in other CID components; (10) provides intramural and extramural technical expertise and assistance in professional training; (11) serves as World Health Organization (WHO) Collaborating Center for Research Training and Control of Dracunculiasis.

Delete in their entirety the headings and statements for the *Division of Vector-Borne Viral Diseases (HCRT)* and the *Division of Viral Diseases (HCRU)* and substitute the following:

Division of Vector-Borne Infectious Diseases (HCRT). (1) Conducts surveillance, investigations, and studies of vector-borne viral and bacterial diseases and plague to define disease etiology and to develop effective methods and strategies for diagnosis, prevention, and control; (2) conducts investigations on the biology, ecology, and control of vectors of viral and bacterial diseases as a basis for development and/or modification of existing measures for more effective prevention and control of vector-borne viral and bacterial diseases and plague; (3) conducts or participates in clinical, field, and laboratory studies to develop, evaluate, and improve laboratory methods and materials and therapeutic practices used for diagnosis, prevention, and treatment of vector-borne diseases; (4) provides epidemic aid and epidemiologic consultation, upon request, to State and local health departments, other Federal agencies, and national and international health organizations; (5) provides reference/diagnostic services for vector-borne viral and bacterial and plague diseases to State and local health departments, other Federal agencies, and national and international health organizations; (6) conducts research and collaborates on development and evaluation of immunizing agents and the role of protective immunity in the disease process; (7) provides guidance and scientific direction to the San Juan, Puerto Rico, field activities for application of effective programs in surveillance, diagnosis, prevention, and control of dengue fever; (8) provides scientific and technical assistance to other CID components when the work requires unique expertise or specialized equipment not available in other components; (9) provides intramural and extramural technical expertise and assistance in professional training

activities; (10) serves as appropriately designated national and international reference centers for vector-borne viral and bacterial diseases.

Division of Viral and Rickettsial Diseases (HCRU). (1) Conducts surveillance, investigation, and studies of viral diseases and rickettsial diseases to define disease etiology and to develop effective methods for prevention, diagnosis, and control; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methods and materials and therapeutic practices used for prevention, diagnosis, and treatment of viral and rickettsial diseases; (3) conducts research on virus transmission to develop effective control strategies and on vaccine effectiveness to assess prevention potential; (4) conducts ecological studies to develop effective disease prevention and control measures of viral, rickettsial, and zoonotic infections; (5) provides epidemic aid and epidemiologic consultation, upon request, to State and local health departments, other Federal agencies, and national and international health organizations; (6) provides reference/diagnostic services for viral and rickettsial diseases to state and local health departments, other Federal agencies, and national and international health organizations; (7) provides scientific and technical assistance to other CID components when the work requires unique expertise or specialized equipment not available in other components; (8) provides intramural and extramural technical expertise and assistance in professional training and proficiency testing activities; (9) serves as appropriately designated national and international reference centers for viral and rickettsial diseases.

Dated: September 21, 1989.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 89-23349 Filed 10-3-89; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-09-4333-08]

Boundary and Classification Decision for the Merced Wild and Scenic River, Mariposa County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has established a Wild and Scenic River boundary measuring one-quarter mile in width on both sides of the Merced River administered by BLM. This segment of the river (from the Forest Service boundary on the east to 300 feet east of the confluence to Bear Creek) will be classified recreational.

This determination is based on analysis derived from the South Fork Merced and Merced Wild and Scenic River classifications and boundary Environmental Assessment. The selected alternative (Alternative B) has been determined not to be a major Federal Action that would significantly affect the human environment.

DATE: Affected individuals may file an appeal on or before November 3, 1989.

ADDRESSES: Information on this action may be obtained at:

Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825.

Bureau of Land Management, Bakersfield District Office, 800 Truxton Avenue, Room 302, Bakersfield, CA 93301.

Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

SUPPLEMENTARY INFORMATION: 1. The South Fork Merced and Merced Wild and Scenic River classifications and boundaries Environmental Assessment was jointly developed by the Forest Service and the Bureau of Land Management. The final EA was completed in August, 1989. Notice of Availability was published in the Federal Register August 9, 1989 (54 FR 32677).

2. Any appeal to the decision should be done in accordance with the regulations in 43 CFR, part 4, Subpart E. D. K. Swickard, Area Manager.

[FR Doc. 89-23411 Filed 10-3-89; 8:45 am]

BILLING CODE 4310-40-M

(WY-060-09-4120-17)

Availability of Lithologic and Geophysical Logs; Campbell County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice of availability of three lithologic and four geophysical logs for three groundwater monitoring wells drilled without a Bureau of Land Management permit through unleased Federal coal in T. 47 N., R. 72 W., section 2, SE $\frac{1}{4}$ SE $\frac{1}{4}$; T. 51 N., R. 72 W.,

section 29, NW $\frac{1}{4}$ NE $\frac{1}{4}$; and section 33, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Campbell County, Wyoming.

SUMMARY: Notice is hereby given that three lithologic logs and four geophysical logs including Wyoming State Plane Coordinates are now available to the public for Campbell County, Wyoming.

Reproduction of the logs are available through the Casper District, Branch of Solid Minerals. The groundwater monitoring information is available through the Wyoming State Engineer's Office.

FOR FURTHER INFORMATION CONTACT: Edward Coy, Chief, Branch of Solid Minerals, Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601, phone (307) 261-7660.

Dated: September 25, 1989.

James Monroe,
District Manager.

[FR Doc. 89-23408 Filed 10-3-89; 8:45 am]

BILLING CODE 4310-22-M

[OR 42239; OR 118-84-6334-12; GPO-002]

Exchange of Public Lands in Josephine and Curry County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public lands in Josephine and Curry, Oregon.

SUMMARY: This notice is to advise the public that the Glendale and Grants Pass Resource Areas of the Medford District Bureau of Land Management (BLM) and private landowner Larry Brown are proposing a land exchange.

The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976, USC 1716:

Willamette Meridian

T. 35 S., R. 6 W.,

Section 29, NW $\frac{1}{4}$ NW $\frac{1}{4}$ (O&C).

T. 36 S., R. 6 W.,

Section 8, NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$; (PD).

Section 17, N $\frac{1}{2}$ N $\frac{1}{2}$; (O&C).

T. 36 S., R. 7 W.,

Section 11, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$; (O&C).

T. 37 S., R. 6 W.,

Section 11, N $\frac{1}{2}$ NW $\frac{1}{4}$; (O&C).

Section 17, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$; (O&C).

The above described area comprises approximately 495(±) acres in Josephine County, Oregon.

The Federal Government will acquire the following described private lands from Larry Brown:

Willamette Meridian

T. 32 S., R. 10 W.,

Section 36, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
T. 33 S., R. 10 W.,

Section 1, Lots 1 and 2, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$;

Section 2, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ S
E $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$;

The above described area comprises approximately 378 (±) acres in Curry County, Oregon.

The purpose of the Land exchange (identified by Serial Number OR 42239) is to facilitate resource management opportunities by the Glendale Resource Area, Medford District. The Private land being offered has very important values for timber, which would be managed as mandated by the O&C Act, and for wildlife. The exchange would block ownership of BLM-administered lands in the area. The selected BLM parcels are isolated tracts, non-contiguous to other BLM lands, and in some cases, lacking legal access. The parcels are mostly timbered, however, because of the above factors and their direct proximity to rural residences and highly populated areas, BLM timber management on the parcels could be uneconomical and difficult. The public interest would be highly served by making this exchange.

Acreage consisting of any or all of the BLM parcels to be exchanged must be approximately equal in value to the acreage offered by Mr. Brown, and upon completion of the final appraisal of the lands, cash equalization payments will be made if the values are within twenty-five percent (25%).

The exchange will be subject to:

1. Reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (43 USC 945).

2. All other valid existing rights, including but not limited to, any right-of-way, easement or lease of record.

Publication of this Notice in the Federal Register will segregate the public lands described above, to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

Detailed information concerning the exchange is available for review at the Medford District Office, 3040 Biddle Road, Medford, Oregon 97504, or by calling Jim Badger, at (503) 770-2306.

For a period of 45 days from the date of publication of this Notice in the Federal Register, interested parties may

submit comments to the Medford District Manager at the above address.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action.

Date signed: September 26, 1989.

David A. Jones,

District Manager.

[FR Doc. 89-23412 Filed 10-3-89; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-09-4214-10; CACA 24047]

Partial Termination of Proposed Withdrawal and Reservation of Land; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of the U.S. Department of the Navy application CACA 24047 for the withdrawal and reservation of public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, was published in the Federal Register on February 2, 1989 (54 FR 5284). The U.S. Department of the Navy has cancelled its application as to the lands described below:

Mount Diablo Meridian

T. 28 S., R. 43 E.,

Sec. 19, S $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$, S $\frac{1}{2}$ N $\frac{1}{2}$ W $\frac{1}{2}$, and S $\frac{1}{2}$ W $\frac{1}{2}$.

The area described contains 560 acres in San Bernardino County.

DATE: At 10 a.m. on November 6, 1989, the land will be relieved of its segregative effect in accordance with the regulations in 43 CFR 2310.2-1(c).

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, E-2845 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4820.

Dated: September 26, 1989.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 89-23407 Filed 10-3-89; 8:45 am]

BILLING CODE 4310-40-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-262]

The Economic Effects of Significant U.S. Import Restraints Phase II: Agricultural Products and Natural Resources

AGENCY: United States International Trade Commission.

ACTION: Scheduling of hearing and request for comments in connection with phase II of the investigation.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Seth Kaplan (202) 252-1231, or Donald Rousslang (202) 252-1223, Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

The Commission instituted investigation No. 332-262 following receipt of a letter dated September 9, 1988, from the Senate Committee on Finance. The Committee requested that the investigation be conducted in three consecutive annual phases addressing the effects of significant U.S. import restraints on (1) imports of manufactured products, (2) imports of agricultural products and natural resources, and (3) service industries. The Commission has submitted its report on phase I on September 11, 1989. Notice of the institution of the investigation and of the hearing and other matters related to phase I was published in the Federal Register of October 19, 1988 (53 FR 40971).

As requested by the Committee, the phase II report (like the reports on the other two phases) will include an assessment of the effects on U.S. consumers, on the output and profits of U.S. firms, on the income and employment of U.S. workers, and on the net economic welfare of the United States. It will assess the direct effect on U.S. industries that are protected by the import restraints and the indirect effects on "downstream" industries that are customers of the protected industries.

This phase will focus on U.S. restraints to imports of agricultural products and natural resources, whether the restraints result from an Act of Congress, an action taken under the fair trade laws of the United States, such as 201 of the Trade Act of 1974, or an international agreement. However, the report will not cover those import restraints resulting from final antidumping or countervailing duty investigations by the ITC and the Department of Commerce, investigations by the ITC under section 337 of the Tariff Act of 1930, or section 406 of the Trade Act of 1974, or investigations by the U.S. Trade Representative under section 301 of the Trade Act of 1974.

The Commission expects to report the results of this phase of the investigation

to the Committee on Finance on or about September 11, 1990.

Public Hearing

A public hearing in connection with the second phase of this investigation will be held in the Commission Hearing Room, 500 E Street, SW, Washington, D.C. 20436, beginning at 9:30 a.m. on March 7, 1990. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436, no later than noon, February 21, 1990. The deadline for filing prehearing briefs (original and 14 copies) is February 21, 1990. A date for public hearings in connection with the third phase will be announced later.

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report and post-hearing briefs should be submitted at the earliest practical date and should be received no later than March 21, 1990. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on (202) 252-1810.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: September 27, 1989.

[FR Doc. 89-23394 Filed 10-3-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-254]

Certain Small Aluminum Flashlights and Components Thereof; Issuance of General Exclusion Order**AGENCY:** U.S. International Trade Commission.**ACTION:** Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order under 19 U.S.C. 1337(d) to prevent the unauthorized importation into the United States of small aluminum flashlights and components thereof which directly or contributorily infringe claims 1, 2, 3, or 4 of U.S. Letters Patent 4,577,236.

ADDRESSES: Copies of the general exclusion order, the Commission Opinion relating thereto, and all other nonconfidential documents on the record of the above-captioned investigation are, or will be, available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1092. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On January 25, 1988, the Commission determined that there was no violation of section 337 (19 U.S.C. § 1337) in this investigation. On February 15, 1989, the United States Court of Appeals for the Federal Circuit issued an opinion and judgment which affirmed in-part and reversed in-part the Commission's determination and remanded this investigation to the Commission for further proceedings not inconsistent with the Court's opinion and judgment. On March 21, 1989, the Court amended its opinion and judgment as a result of a petition for rehearing. On April 11, 1989, the Court issued its mandate, returning this investigation to the jurisdiction of the Commission.

After considering the submissions received and examining the record developed during the investigation, the Commission determined that there was a violation of section 337 and that the

appropriate remedy for the violation of section 337 is a general exclusion order prohibiting the importation of infringing small aluminum flashlights and components thereof for the remaining term of the patent, except under license from the patent owner.

The Commission also determined that the public interest considerations listed in subsection (d) of section 337 do not preclude issuance of a general exclusion order and that while the order is under review by the President pursuant to subsection (j) of section 337 (19 U.S.C. 1337(j)), the excluded articles will be entitled to enter the United States under a bond in the amount of 150 percent of the articles' entered value.

The authority for the aforesaid Commission determinations and the general exclusion order is contained in 19 U.S.C. 1337, as amended by section 1342 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418 100th Cong., 1342, 102 Stat. 1212 (August 23, 1988), and in interim rules 210.53-58 of the Commission's Rules of Practice and Procedure, 53 FR 33070 (August 29, 1988).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 26, 1989

[FR Doc. 89-23395 Filed 10-3-89; 8:45 am]

BILLING CODE 7020-02-M

Certain Strip Lights; Issuance of General Exclusion Order

[Investigation No. 337-TA-287]

AGENCY: U.S. International Trade Commission.**ACTION:** Notice.

SUMMARY: Notice is given that the Commission has issued a general exclusion order in the above-captioned investigation. The order prohibits the unlicensed importation from any country of certain strip lights and certain packaging and literature pertaining to strip lights. With regard to findings of fact concerning various non-respondents that were noticed for review, the Commission takes no position regarding the adoption or vacatur of such findings. The Commission determines that those findings do not affect the outcome of this investigation.

FOR FURTHER INFORMATION CONTACT:

William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC, 20436, telephone (202)-252-1116. Copies of the Commission's order, the nonconfidential version of the opinion issued therewith, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 am to 5:15 pm) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC, 20436, telephone (202)-252-1000. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 28, 1988 (53 FR 37882), upon a complaint filed by Vista Manufacturing, Inc., of Elkhart, Indiana. Vista's complaint alleged violation of section 337 through the importation or sale of certain strip lights by reason of patent infringement, registered trademark infringement, misappropriation of trade dress, and misappropriation of photographs. The Commission's notice of investigation named as respondents Cherg Lian Enterprises Co., Inc., of Taiwan, and Golden Apple Corporation of Queens Village, New York.

On January 19, 1989, the presiding ALJ denied complainant's motion to amend the complaint to include four additional respondents (Order No. 4). On April 5, 1989, the Commission determined not to review an ID granting complainant's motion to amend the notice of investigation to delete the counts relating to misappropriation of trade dress and misappropriation of photographs, thus leaving only the counts of patent and registered trademark infringement (54 FR 14874, April 13, 1989).

On March 27, 1989, the ALJ issued an ID (Order No. 7) finding respondents Cherg Lian and Golden Apple in default. The ID provided that the respondents had "waived their right to be served with documents and to contest the allegations at issue in the investigation." The Commission determined not to review the ID, which thus became the Commission's finding (54 FR 22636, May 25, 1989). An evidentiary hearing was held on April 3, 1989, at which complainant and the

Commission investigative attorney (IA) appeared.

On June 27, 1989, the ALJ issued his final ID finding that a violation of section 337 had been established in the importation and sale of certain strip lights by reason of infringement of Trademark Registration No. 1,433,725 for "Flex Lite," and claims 1-4 and 7 of U.S. Letters Patent 4,376,966, owned by complainant Vista. The Commission determined to review only the question of whether it was proper for the ID to contain findings as to patent and trademark infringement, importation, and/or sale by several non-respondents. The remainder of the ID thereby became the determination of the Commission. Briefs were filed by complainant and the IA regarding the issue under review, and remedy, the public interest, and bonding. No reply briefs or submissions of government agencies or other members of the public were received.

The authority for this action is conferred by section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and by Commission interim rules 210.56 and 210.58 (53 FR 33071-72, Aug. 29, 1988).

By order of the Commission.
Lisbeth K. Godley,
Acting Secretary.

Issued: September 28, 1989.
[FR Doc. 89-23396 Filed 10-3-89; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28905 (Sub-No. 22)]

CSX Corporation—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc.

[Finance Docket No. 29430 (Sub-No. 20) ¹]

Norfolk Southern Corporation—Control—Norfolk and Western Railway Co. and Southern Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of reopening and request for comments.

SUMMARY: The Commission is seeking public comment on legal issues involving the interrelationship between the Commission's approval of transactions under 49 U.S.C. 11343, the imposition of labor conditions under 49

U.S.C. 11347, the provisions of 49 U.S.C. 11341(a), and the Railway Labor Act.

DATES: Comments are due by October 24, 1989. Replies to comments are due by November 3, 1989.

ADDRESS: Send comments referring to Finance Docket No. 28905 (Sub-No. 22) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: On July 25, 1989, the United States Court of Appeals for the District of Columbia Circuit issued its opinion on review of the above-entitled proceedings in *Brotherhood of Railway Carmen v. Interstate Commerce Commission and United States of America*, No. 88-1724, and *American Train Dispatchers' Association v. Interstate Commerce Commission and United States of America*, No. 88-1694. The court reversed parts of the Commission's decisions and remanded other parts to the agency for further proceedings, if necessary.

We believe that further proceedings are necessary in order to permit the Commission to properly reassess the role of the Commission and its labor conditions in railroad consolidations. Accordingly, we are reopening these proceedings so that we may address and explain in detail our views on the issue specifically remanded; i.e., whether the provisions of 49 U.S.C. 11341(a) operate to override the provisions of the Railway Labor Act (RLA), as well as on the general issues raised in these proceedings, particularly the impact of our approval of a transaction under 49 U.S.C. 11343 *et seq.* and imposition of our standard labor conditions upon the parties' rights and remedies under the RLA and with respect to existing collective bargaining agreements.

We have also filed a limited petition seeking rehearing of the court's ruling. In the petition, we advised the court of our intention to reopen these proceedings and to promptly issue a comprehensive decision on remand addressing issues we believe the court directed us to reconsider and those left open for resolution in further proceedings. We requested that the court refrain from ruling on our petition for rehearing until we issue our decision on remand. A copy of the rehearing petition is available from the Secretary of the Commission.

In light of the importance of the legal issues involved and our intention to conduct a comprehensive examination of our authority under 49 U.S.C. 11341,

11343, and 11347, etc., and the labor conditions we have customarily imposed in approving railroad consolidations, we are seeking further comment by the parties to these proceedings as well as any other interested parties. We have described above the nature of the issues that the Commission will be exploring. Interested parties are encouraged to comment on any or all of these legal issues. We also note that there are other recent court decisions concerning labor protective conditions, including *Pittsburgh & Lake Erie RR. Co. v. Railway Executives' Ass'n*, ___ S. Ct. ___ (No. 87-1589, June 21, 1989) and *Railway Labor Executives' Ass'n v. ICC*, No. 88-1391 (D.C. Cir. August 29, 1989) and request the parties and other interested persons to comment on these cases to the extent that they are relevant here.

As we advised the court in our petition for rehearing, the decision on remand will be issued no later than December 15, 1989.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: August 21, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley dissented in part with a separate expression.

Noreta R. McGee,
Secretary.

[FR Doc. 89-23290 Filed 10-3-89; 8:45 am]
BILLING CODE 7035-01-M

Release of Waybill Data for Use By Intermodal Policy Division (IPD) Association of American Railroads

The Commission has received a request from the Intermodal Policy Division (IPD) of the Association of American Railroads (AAR) for permission to use certain data from the Commission's 1988 ICC Waybill Sample in economic and policy research work. The IPD states that the analysis for the Waybill data is requested as crucial in determining the intermodal competition and public policy issues of national importance.

The Data will be used exclusively as input data for the AAR Intermodal Competition Model. This model is the chief means by which the AAR and the rail industry predict the impact of changes in rail or truck costs on rail industry traffic and revenue. Analysis using the Intermodal Competition Model is very general in nature and national in

¹ This corrects the notice, cited at 54 FR 38754, published on September 20, 1989, which inadvertently contained the wrong docket number for Norfolk Southern Corporation.

scope. Results are reported for the industry as a whole and are aggregated to the two-digit Standard Transportation and Commodity Code (STCC) level.

The full Waybill Sample is the only data base available for these purposes. The Public Use File does not contain several essential model inputs including: six digit Standard Point Location Code, the seven digit STCC, railroad car type, and route.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines; (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any State (49 CFR part 12244). From the waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data request while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party [Ex Parte No. 385 (Sub-No. 2), 52 FR 12415, April 16, 1987].

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of publication in the *Federal Register* of this notice. They should also include all grounds for objections to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: James A. Nash, (202) 275-6864.

Noreta R. McGee,
Secretary.

[FR Doc. 89-23430 Filed 10-3-89; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Anti-Bribery Provisions of the Foreign Corrupt Practices Act

AGENCY: United States Department of Justice.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to 15 U.S.C. 78dd-1(d) and 78dd-2(e), [Public Law 100-418, sec. 5003(a) and Public Law 100-418, sec. 5003(c)], all interested persons are invited to submit their views concerning the extent to which compliance with 15 U.S.C. 78dd-1 and 78dd-2 would be enhanced and the business community assisted by further clarification of the provisions of the anti-bribery provisions through the issuance of guidelines.

DATES: All written submissions should be made by November 3, 1989.

ADDRESSES: Interested persons are invited to submit written views concerning the foregoing. Persons making written submission should file seven copies thereof with the Criminal Division, Fraud Section, P.O. Box 28188, Central Station, Washington, DC 20038. Copies of the submissions, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in Room 7120, Bond Building, 1400 New York Avenue, N.W., Washington, DC between the hours of 10 am and 4 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter B. Clark, Senior Litigation Counsel, Fraud Section, Criminal Division, U.S. Department of Justice at the Fraud Section address given above; telephone 202/786-4363, [FTS] 786-4363.

Dated: September 26, 1989.

Dick Thornburgh,
Attorney General.

[FR Doc. 89-23414 Filed 10-3-89; 8:45 am]
BILLING CODE 4410-01-M

Joint Newspaper Operating Agreement; Las Vegas Sun and Las Vegas Review Journal; Extension of Comments and Requests for Hearing Dates

Notice is hereby given that the Attorney General has extended the date for submitting written comments and requests for a hearing concerning the application by two Las Vegas newspapers, the Las Vegas Sun and the Las Vegas Review-Journal, for approval of a joint operating arrangement (JOA) under the Newspaper Preservation Act, 15 U.S.C. 1801, *et seq.*

The original notice concerning the application by the two newspapers appeared in 54 FR 33984 on August 17, 1989. The deadline for public comments and/or requests for a hearing, as well as for submission of a report by the Antitrust Division of the Department of

Justice responding to the JOA, is normally 30 days from that date. The Attorney General received a request for an extension of time to submit comments. The Antitrust Division also filed a motion for an extension of time to submit its report. The Attorney General granted that motion and extended the public comment period in an order signed on September 25, 1989.

Interested parties may now file their comments or requests for a hearing by mailing or delivering five (5) copies to the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, Washington, DC 20530, by November 20, 1989.

Replies to any comments filed on or before that date may be filed on or before December 20, 1989.

FOR INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division, 202-633-3452.

Dated: September 26, 1989.

Lee E. Probst,

Special Assistant to the Assistant Attorney General for Administration.

[FR Doc. 89-23413 Filed 10-3-89; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree; Caseyville Township, IL, and the State of Illinois

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 25, 1989, a proposed consent decree in *United States v. Caseyville Township, Illinois and The State of Illinois*, Civil Action No. 89-5270, was lodged with the United States District Court for the Southern District of Illinois. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311, at Caseyville's wastewater treatment plants. The complaint alleges that Caseyville discharged pollutants into navigable waters in excess of the limitations in its National Pollutant Discharge Elimination System ("NPDES") permits, and failed to timely upgrade its facilities in order to meet the discharge limitations included in its NPDES permits. The State of Illinois is named as party pursuant to section 309(e) of the Act, 33 U.S.C. 1319(e). The complaint seeks injunctive relief to require Caseyville to comply with its NPDES permit and to pay civil penalties for past violations.

The consent decree requires Caseyville to undertake plant construction upgrades at its facilities in order to come into compliance with its NPDES permits and the Clean Water

Act. Caseyville is also required to pay a civil penalty of \$30,000 in settlement of the government's civil penalty claims.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Caseyville Township, Illinois*, D.J. Ref. 90-5-1-3335.

The proposed consent decree may be examined at the Region V Office of the United States Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$2.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-23416 Filed 10-3-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Department Clearance Officer will, upon request, be able to advise members of the public of

the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement. The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, D.C. 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, D.C. 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Occupational Safety and Health Administration
Access to Employee Exposure and Medical Records
1218-0065

On Occasion

Businesses or other for profit and Small business or organizations 1,170,979 respondents; 17,499,944 responses; .072 hours per response; 0 forms

Information Collection Activity

- Records Preservation—811,982
- Records Access—20,303
- Denial of Records Access—8,120
- Employee Notification—428,075

This regulation requires employers to preserve and provide access to records associated with employee exposure to

toxic chemicals and harmful physical agents. Employee records and access to them are important tools for the detection, treatment and prevention of occupational illness and disease.

Bureau of Labor Statistics
Manual for Developing Local Area Unemployment Statistics
1220-0017, BLS 3040, LAUS-2, LAUS-3
Monthly and Annually
State Governments
67,680 total responses; 137,249 total hours; 2.03 hours per response; 3 forms

Local Area Unemployment Statistics are used as indicators of local economic conditions, as a mechanism to qualify areas for various economic assistance, and as an allocator for existing job training and economic assistance program funding.

Signed at Washington, DC, this 29th day of September 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-23424 Filed 10-3-89; 8:45 am]

BILLING CODE 4510-26-M)

BILLING CODE 4510-24-M)

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 16, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than October 16, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment

Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 25th day of September 1989.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
AT&T Information Systems (CW)	Arlington, VA	9/25/89	9/8/89	23,408	Telecommunication Equipment
American Recreation Production, Inc. (Workers)	New Haven, MO	9/25/89	9/14/89	23,409	Outdoor Products
BHP Petroleum (Americans), Inc., Corporate Headquarters (Company)	Houston, TX	9/25/89	8/18/89	23,410	Oil & Gas
Baxter Healthcare Corp. (Workers)	Eaton, OH	9/25/89	9/10/89	23,411	Gloves
(The) Bovaird Supply Co. (Workers)	Tulsa, OK	9/25/89	9/7/89	23,412	Oil & Gas
Briscoe Drilling Co. (Workers)	Kingfisher, CO	9/25/89	8/31/89	23,413	Oil & Gas
CooperVision Cilco (Company)	Bellevue, WA	9/25/89	9/11/89	23,414	Intracocular Lenses
Cotter Corp., Schwartwalder Mine (OCAWIU)	Golden, CO	9/25/89	9/15/89	23,415	Uranium
Cuddle Wit, Inc. (Company)	Orange, NJ	9/25/89	9/11/89	23,416	Stuffed Toys
Grand Drilling, Inc. (Workers)	Breckenridge, TX	9/25/89	9/14/89	23,417	Oil & Gas
Jonesboro Wood Products (Workers)	Jonesboro, LA	9/25/89	8/20/89	23,418	Lumber
Mid-Continent Supply Co. (Workers)	Ft. Worth, TX	9/25/89	9/14/89	23,419	Oilfield Equip.
Mid-Continent Supply Co. (Workers)	Natchez, MS	9/25/89	9/14/89	23,420	Oilfield Equip.
Mobil Exploration & Producing U.S., Inc. Dallas Affiliate (Company)	Dallas, TX	9/25/89	9/12/89	23,421	Oil & Gas
Mobil Exploration & Producing U.S., Inc. Denver Div. (Company)	Denver, CO	9/25/89	9/12/89	23,422	Oil & Gas
Mobil Exploration & Producing U.S., Inc. New Orleans/Offshore Div. (Company)	New Orleans, LA	9/25/89	9/12/89	23,423	Oil & Gas
Mobil Exploration & Producing Services Headquarters (Company)	Dallas, TX	9/25/89	9/12/89	23,424	Oil & Gas
Pulsonix, Inc. (Company)	Englewood, CO	9/25/89	9/5/89	23,425	Seismic Data Processing
Seagate Technology, Service Center	Delray Beach, FL	9/25/89	9/13/89	23,426	Repair & Service of Disc Drives
Sensus Technologies, Inc. (USWA)	Uniontown, PA	9/25/89	9/9/89	23,427	Watermeters
Specialty Services (Workers)	Farmington, NM	9/25/89	9/13/89	23,428	Repair Gas Compressors
Target Kent I (ACTWU)	Curwensville, PA	9/25/89	9/6/89	23,429	Ladies'/Mens' Sportswear
Target Kent II (ACTWU)	Curwensville, PA	9/25/89	9/6/89	23,430	Ladies'/Mens' Sportswear
Target, Hyde (ACTWU)	Hyde, PA	9/25/89	9/6/89	23,431	Ladies'/Mens' Sportswear
Target, Fletcherville (ACTWU)	Clearfield, PA	9/25/89	9/6/89	23,432	Ladies'/Mens' Sportswear
Taurus Petroleum, Inc. (Company)	Denver, CO	9/25/89	9/1/89	23,433	Oil & Gas
Valdez Creek Mining Co. (Company)	Cantwell, AK	9/25/89	9/6/89	23,434	Gold Nuggets
Van Dorn Plastic Machinery Co. (Workers)	W. Boylston, MA	9/25/89	9/12/89	23,435	Plastic Injection Molding Machines

[FR Doc. 89-23423 Filed 10-3-89; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-143-C]

Aero Energy Inc.; Petition for Modification of Application of Mandatory Safety Standard

Aero Energy Inc., Box 62, Toler, Kentucky 41569 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 1 Mine (I.D. No. 15-07082) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that at least one entry of each intake and return aircourse be examined in its entirety on a weekly basis.

2. Due to several roof falls certain intake and return entries in the mine cannot be safely traveled.

3. As an alternative method, petitioner proposes to establish evaluation points at specific locations where the air passing over the falls would be evaluated.

4. In support of this request, petitioner states that—

(a) These evaluations points would be examined weekly for quality and quantity of ventilation current; and

(b) The results would be recorded in a weekly Examinations for Hazardous Conditions Book.

5. Petition states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 3, 1989. Copies of the petition are available for inspection at that address.

Dated: September 27, 1989.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-23422 Filed 10-3-89; 8:45 am]
BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee Meeting

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Cancellation of scheduled meeting.

SUMMARY: On September 15, 1989, the Occupational Safety and Health Administration (OSHA) published in the

Federal Register notice of a meeting of the Shipyard Employment Standards Advisory Committee scheduled to be held on October 11-12, 1989 at the Holiday Inn, Arlington, Virginia (54 FR 38298). That meeting is hereby cancelled; additional time is needed to consider and review written materials on the various agenda items. OSHA plans to reschedule this meeting and will advise interested persons of the new date for the Advisory Committee meeting by notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue, N.W., Washington, DC 20210.

Signed at Washington, DC, this 2nd day of October 1989.

Alan C. McMillan,

Acting Assistant Secretary.

[FR Doc. 89-23586 Filed 10-3-89; 8:45 am]

BILLING CODE 4510-26-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for the U.S. Merit Systems Protection Board Publication, "Questions & Answers About Appeals"

AGENCY: U.S. Merit Systems Protection Board.

NOTICE: Notice of call for riders for the Board's publication, "Questions & Answers About Appeals."

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that the U.S. Merit Systems Protection Board's information publication, "Questions & Answers About Appeals," will be available on riders to the Government Printing Office. Departments and agencies may order this publication by riding the Board's requisition number 9-00255.

DATE: Agency requisitions (Standard Form 1) must be received by the Government Printing Office on or before October 9, 1989.

ADDRESS: Interested departments and agencies should send requisitions from their Washington, DC, headquarters offices authorized to procure printing to the Government Printing Office, Requisitions Section, Room 836, Washington, DC 20401.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, Office of Management Analysis, U.S. Merit Systems Protection Board, 1120 Vermont

Avenue, N.W., Washington, DC 20419, 202-653-8892.

SUPPLEMENTARY INFORMATION: This publication is a completely revised and updated version of the Board's 1980 publication, "How to File an Appeal." It contains general information on the rights of Federal employees to appeal certain personnel actions to the Board, information on how to file an appeal with the Board, and other procedural information regarding the appeals process. The publication has been rewritten in a question and answer format to enhance understanding.

Agencies may estimate cost by using the current Government Printing Office price list of printing services. The report will be 5 1/2 x 9 1/2 inches, saddle stitched, and 24 pages.

In making this publication available, the Board intends to provide general information about appeal rights and procedures in a convenient, readable format for Federal employees and others with an interest in the Board's activities. The publication is not all-inclusive, nor is it regulatory in nature. The availability of this publication does not relieve an agency of its obligation, under the Board's regulations at 5 CFR 1201.21, to provide an employee against whom an action appealable to the Board is taken with notice of the employee's appeal rights and the other information specified in the Board's regulations.

The publication has been updated to include information about the provisions of the Whistleblower Protection Act of 1989, Public Law No. 101-12, effective July 9, 1989, that apply to Board appeals generally. It does not include information on the special provisions of the Act applying to "whistleblower" appeals. That information will be provided in a separate publication, titled "Questions & Answers About Whistleblower Appeals," to be issued at a later date. When that publication is transmitted to the Government Printing Office, the Board will publish a notice of call for riders in the Federal Register.

Dated: September 29, 1989.

Robert E. Taylor,
Clerk of the Board.

[FR Doc 89-23425 Filed 10-3-89; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL COMMISSION ON CHILDREN

Hearing

Background

The National Commission on Children was created by Public Law 100-203, December 22, 1987 as an amendment to

the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces the first hearing of the National Commission on Children to be held in Chicago, Illinois. Time: 7:00 p.m.-10:00 p.m. Thursday, October 12, 1989

Place: Madison Consolidated High School, 743 Clifty Drive, Madison, Indiana 47250

Status: 7:00 p.m.-10:00 p.m. Open to the public

Agenda: Children and Families in Rural America

Contact: Jeannie Atalay (202) 254-3800

Date: September 28, 1989.

John D. Rockefeller IV,
Chairman, National Commission on Children.
[FR Doc. 89-23364 Filed 10-3-89; 8:45 am]

BILLING CODE 6820-37-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 786-0322.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by

grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meeting. I have determined that this meeting will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

1. Date: October 31, 1989.

Time: 8:30 a.m. to 5:00 p.m.

Room: 316-2.

Program: This meeting will review applications for Regrant Conferences, submitted to the Division of Research Programs, for projects beginning after December, 1989.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89-23352 Filed 10-3-89; 8:45 am]

BILLING CODE 7536-01-M

Cancellation of Meeting of Humanities Panel

The meeting of the Humanities Panel scheduled for October 26-27, 1989, and published in the *Federal Register* on September 19, 1989, at page 38571, has been cancelled. The meeting was to review applications submitted to the Humanities Projects in Libraries and Archives Programs, Division of General Programs for the September 1989 deadline. The meeting was to be held at the National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC, Room 430 from 9:00 a.m. to 5:30 p.m.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 89-23353 Filed 10-3-89; 8:45 am]

BILLING CODE 7536-01-M

Meeting; Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Advancement Section) to the National Council on the Arts will be held on October 26, 1989, from 9:15 a.m.—5:00 p.m. in Room 714 of the Nancy Hanks

Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: September 27, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-23343 Filed 10-3-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 11, 1989 through September 22, 1989. The last biweekly notice was published on September 20, 1989 (54 FR 38759).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 3, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2.

Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facilities involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the

petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S.

Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arkansas Power & Light Company,
Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: August 22, 1989

Description of amendment request: The amendment would change the allowable minimum setpoint value on the Pressurizer Code Safety Valves as specified in Technical Specification (TS) 3.4.2 and 3.4.3 from 1% to 3%. It would also change the minimum setpoint value for the Main Steam Line Code Safety Valves from 1% to 3% as specified in Technical Specification Table 3.7-5. Under these TS revisions, if the setpoint for either type of safety valve was found outside a 271% tolerance band, the setpoint would be adjusted to within 271% of the lift setting specified in the TS.

The change would allow more flexibility during plant operation and would result in reduced worker radiological exposure associated with valve testing and setpoint adjustment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to a operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in the margin of safety. Arkansas Power and Light Company (AP&L) has reviewed the proposed change and has determined that it involves no significant hazards considerations, in that operation of the facility in accordance with the proposed amendment would not:

Criterion 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not affect previously analyzed events or any parameters associated with plant operations. Although a decrease in the Main Steam Line Code Safety Valves lift settings of 3% may affect the automatic transfer to post-trip secondary pressure control to the Turbine Dump and Bypass System (TDBS), previously analyzed events have conservatively not taken credit for operation of the TDBS. The primary and secondary coolant overpressure limits are not changed by this proposed amendment since the upper limits of pressure will be maintained at +1%. Furthermore, during testing, the valves will be adjusted to be within the currently required 271% tolerance. Therefore, the proposed changes have no impact on the safety analyses presented in the Safety Analysis Report and the probability or consequences of previously evaluated accidents would not be increased.

Criterion 2 - Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change does not introduce a new mode of plant operation. The safety valves will continue to function per their design and a 3% decrease in a lift setting will remain significantly above normal system operating pressures. Since no hardware modifications or changes in operating procedures will be made, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3 - Involve a Significant Reduction in a Margin of Safety

The safety margin is controlled by the upper tolerance limit, which is not changed. The lift settings will continue to be set within

1% of setpoint and with an "as-found" tolerance of +1%, -3%, the safety function of the setpoint is not altered. The system capabilities to mitigate and/or prevent accidents will be the same as they were prior to these changes. Thus, the proposed changes would not involve a reduction in a margin of safety.

The staff has reviewed AP&L's no significant hazards consideration determination analysis and agrees with its conclusion. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Frederick J. Hebdon

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: June 30, 1989

Description of amendment request: The methodology for predicting reactor vessel material embrittlement has been improved and revised. The new methodology was published in Revision 2 of Regulatory Guide 1.99 (RG 1.99), "Radiation Embrittlement of Reactor Vessel Materials." Generic Letter 88-11 requested an evaluation and schedule for the implementation of the RG 1.99, Revision 2 changes to the Technical Specifications (TS). This amendment request incorporates the changes of the new methodology into the Shearon Harris Nuclear Power Plant, Unit 1, (Harris) TS. The revisions affect the pressure-temperature limitations on the Reactor Coolant System (RCS), the heatup and cooldown rates for the RCS, and the associated Low Temperature Overpressure Protection System (LTOP) set points. In addition, the new methodology requires related changes in (1) recalculated limiting material reference temperature (RT sub-NDT), (2) modified LTOP enable temperature, (3) the selection of instrumentation for monitoring RCS average temperature and (4) revisions to the TS Bases. Finally, some administrative changes are requested such as: (1) rewording to clarify certain specifications, (2) delete redundant surveillances, and (3) removal of the reference to criticality limits in TS 3.4.9.1, 3.4.9.2 and Figure 3.4-3.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated as described below.

(a) Technical Specifications 3.4.9.1 and 3.4.9.2 "REACTOR COOLANT SYSTEM PRESSURE/TEMPERATURE LIMITS" provide RCS pressure-temperature limits to protect the reactor pressure vessel from brittle fracture by clearly separating the region of normal operations from the region where the vessel is subject to brittle fracture. The heatup and cooldown rates of Specifications 3.4.9.1 and 3.4.9.2, and LTOP setpoints in Specification 3.4.9.4 are designed to ensure that the RCS pressure-temperature limits are not exceeded during any condition of normal operation, including anticipated operational occurrences, and system hydrostatic tests.

Title 10 of the Code of Federal Regulations Part 50 Appendix G, "Fracture Toughness Requirements," and Appendix H, "Reactor Vessel Material Surveillance Program Requirements," require the calculation of changes in the fracture toughness of reactor vessel materials caused by neutron radiation throughout the service life of nuclear reactors. The 'change' is used in conjunction with the initial material reference temperature (RT_{NDT}) to establish the limiting pressure-temperature curves. Regulatory Guide 1.99 contains procedures for calculating the effects of neutron radiation embrittlement of the low-alloy steels currently used for light-water-cooled reactor vessels.

Revision 2 of the regulatory guide upgrades and expands the procedures for calculating vessel radiation embrittlement. Generally, Revision 2 methods result in a lowering of the Appendix G pressure-temperature curves. By increasing the margin between the region where the vessel may be subject to brittle fracture and the region of acceptable operations, these more restrictive curves ensure the continued safe operation of SHNPP by reducing the probability of operation in a manner which may exceed the brittle fracture limits of the reactor vessel.

The revised pressure-temperature curves required modification of the LTOP setpoints

and the heatup and cooldown rates. Revised LTOP setpoints and heatup/cooldown rates were chosen to ensure that the existing margin was maintained i.e., that given a limiting mass or heat input to the RCS during normal operations, anticipated occurrences and system hydrostatic testing, the Appendix G pressure-temperature curves are not exceeded.

Therefore, the proposed amendments to the pressure-temperature limitations, the heatup and cooldown rates, the LTOP setpoints and the recalculated initial limiting material RT_{NDT} do not involve a significant increase in the probability or consequences of an accident previously evaluated because collectively they implement more accurate and restrictive protection to prevent brittle fracture of the reactor pressure vessel.

(b) The revised LTOP enable temperature does not significantly increase the probability or consequences of an accident previously evaluated. Low Temperature Overpressure Protection of the RCS is required by Technical Specification 3.4.9.4. LTOP is necessary at low temperature since operator response to an RCS pressurization event may not successfully avoid exceeding the RCS pressure-temperature limits. The Regulatory Analysis for Revision 2 of Regulatory Guide 1.99 specified that LTOP is necessary at temperatures below $RT_{NDT} + 90^\circ\text{F}$. This corresponds to 296°F for SHNPP. The SHNPP LTOP system is currently armed at 335°F . A 10°F lowering of the enable temperature would have no impact on the LTOP system's capability to perform its automatic protection function at low temperatures since LTOP is still armed above 296°F . Therefore, the proposed LTOP enable temperature change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(c) The change to Technical Specification Table 4.4-6 concerning the choice of the instrumentation for monitoring RCS temperature provides the operator with temperature information that more accurately characterizes the vessel material temperature. It would be used to determine the appropriate heatup or cooldown rate for the RCS. Use of more accurate temperature information would have no adverse effect on the probability or consequences of previously evaluated accidents.

(d) The remaining changes, i.e., removal of criticality limits, specification clarifications, and deleted redundant surveillance are administrative in nature and therefore would have no impact on the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment does not introduce any new equipment, operating procedures or constraints. This amendment either changes existing limits or incorporates administrative changes. Therefore no new accident or malfunction is introduced by this amendment.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The margin of safety defined in the Technical Specification Bases is not reduced

by the change, since restrictions remain in place to ensure the operating limits of the reactor vessel are not challenged. The effect of the amendment is to implement more accurate and restrictive protection from brittle fracture of the reactor pressure vessel and as such to enhance the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

**Commonwealth Edison Company,
Docket Nos. 50-373 and 50-374, LaSalle
County Station, Unit Nos. 1 and 2,
LaSalle County, Illinois**

Date of application for amendment:
June 1, 1989

Description of amendment request:
The proposed amendment would revise the Technical Specification (TS) 3.6.1.8 action statement regarding the operations of the drywell and suppression chamber purge system during operational conditions 1, 2, and 3. It would allow continued operation with a drywell and/or suppression chamber purge supply and/or exhaust butterfly isolation valve open for other than inerting, de-inerting or pressure control. This would allow performance of periodic cycling of the pneumatically operated VQ valves per the manufacturer's recommendation.

Basis for proposed no significant hazards consideration determination:
The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in this request for a license amendment. The licensee states that operation of LaSalle County Station Units 1 and 2, in accordance with the proposed amendment, will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because this change does not affect the original system design of venting or purging the primary containment. Operation with one valve closed assures primary containment integrity;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because this change does not affect the original system design or venting or purging the primary containment, which is designed to have both valves in the containment penetration open; and

(3) Involve a significant reduction in the margin of safety because primary containment is still maintained with one of the two valves open in each penetration and the open valve is subject to closure by a primary containment isolation signal.

The staff has reviewed the licensee's evaluation of the proposed amendment and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed change to the Technical Specifications does not involve significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Paul C. Shemanski, Acting Director

**Commonwealth Edison Company,
Docket Nos. 50-373 and 50-374, LaSalle
County Station, Unit Nos. 1 and 2,
LaSalle County, Illinois**

Date of application for amendments:
June 21, 1989

Description of amendments request:
The proposed amendment to the Technical Specifications (TS) would modify TS 3/4 4.6 regarding pressure-temperature limits of the reactor coolant system in order to comply with Generic Letter 88-11 and Regulatory Guide 1.99, Revision 2. Specifically, the submittal would replace the current pressure and temperature curves with new curves, which would be reflected in the limiting conditions for operation. The associated

Bases would be modified as well. Additionally, the amendment would allow that during shutdown conditions for hydrostatic or leak testing or heatup by non-nuclear means, the average coolant temperature limit for cold shutdown and hot shutdown may be measured to 212°F.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment. The licensee states that operation of LaSalle County Station Units 1 and 2, in accordance with the proposed amendment, will not:

(1) Involve significant increase in the probability or consequences of an accident previously evaluated because the proposed change is administrative and does not change the physical facility. The proposed change is the result of a re-evaluation that will put more stringent limits on the pressure-temperature relationship at the station for operation of both units. The revised temperature limit of 200°F still provides for subcooling of the reactor vessel coolant below the boiling point;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change will not introduce any new concerns for safety at the station. Reactor coolant system failure are previously addressed in the UFSAR, as well as pressure and temperature effects on the reactor coolant system. The change to the 200°F temperature limit does not imply any new or different kind of accident but recognizes the actual boiling point of the reactor coolant; and

(3) Involve a significant reduction in the margin of safety because the margin of safety, if anything, will be increased since the new pressure-temperature curve limits will help ensure the continued integrity of the reactor vessel over the life of the plant.

The staff has reviewed the licensee's evaluation of the proposed amendment and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed change to the Technical Specifications does not involve significant hazards consideration.

Local Public Document Room
location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Paul C. Shemanski, Acting Director

Commonwealth Edison Company,
Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois

Date of application for amendments:
July 26, 1989

Description of amendments request: The amendment would revise the TS Table 3.3.2-1, Isolation Actuation Instrumentation, Item A.1.d (main steam line tunnel temperature - high) and Item A.1.3 (main steam line tunnel delta temperature - high). The revised table would allow both channels of each trip system to be placed in an inoperable status for up to 12 hours for required reactor building ventilation maintenance, filter changes, damper cycling and surveillance testing without placing the trip system in the tripped condition. Additionally, the Bases for the TS would be modified to reflect this change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment. The licensee states that operation of LaSalle County Station, Units 1 and 2, in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences on an accident previously evaluated because the Updated Final Safety Analysis Report (UFSAR) provides the safety analysis for inadvertent main steam isolation valve (MSIV) closure. Main steam tunnel (MST) temperature trips are a potential cause of spurious MSIV closures; therefore, by removing the temperature trips, the risk of an

inadvertent MSIV closure will be reduced. Additionally, the UFSAR safety analysis for steam system break outside of the containment assumes that a main steam line instantaneously and circumferentially breaks at a location downstream of the outermost isolation valve. Therefore, the analysis does not take into account the ability to detect small steam leaks in the MST;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the safety evaluation in the UFSAR does not include an analysis of small steam leaks. The only analysis is for a catastrophic failure of a main steam line which represents the envelope evaluation of steam line failures outside of the containment; and

(3) Involve a significant reduction in the margin of safety because analysis has shown that the decrease in the margin of safety due to the removal of the MST temperature trips is insignificant. The small increase in risk to plant safety due to small steam line breaks which quickly propagate to large breaks is more than offset by the reduction in risk to plant safety posed by the challenges to plant systems caused by the spurious MSIV closures.

The staff has reviewed the licensee's evaluation of the proposed amendment and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed change to the Technical Specifications does not involve significant hazards consideration.

Local Public Document Room
location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Paul C. Shemanski, Acting Director

Commonwealth Edison Company,
Docket Nos. 50-373 and 50-374, LaSalle County Station, Units Nos. 1 and 2, LaSalle County, Illinois

Date of application for amendments:
August 18, 1989 and supplemented September 13, 1989.

Description of amendments request: The proposed amendment would revise Technical Specifications (TS) 3/4 2.1, 3/4 2.3, and 3/4 2.4 regarding "Power Distribution Limits," and Table 3.3.6-2, "Control Rod Withdrawal Block Instrumentation Setpoints," to replace the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report, which contains the values of those limits. The Core

Operating Limits Report has been included in the Definitions Section of the Technical Specifications to note that it is the unit-specific document that provides these limits for the current operating reload cycle. In addition, the associated Bases would be modified to reflect these changes. Furthermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with the TS 6.6.A.6. This specification requires that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. This report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988 from the NRC, provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is in response to this Generic Letter. Additionally, the proposed amendment would administratively renumber and reorganize the Definitions Section and the Table of Contents. Finally, the proposed amendment would make editorial changes to TS 5.3.1, "Fuel Assemblies," and TS 5.3.2, "Control Rod Assemblies."

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The proposed revision to the TS is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from TS. The establishment of these limits in accordance to an NRC-approved methodology and the incorporation of these limits into the Core Operating Limits Report will ensure that proper steps have been taken to establish the values of these limits.

The licensee has provided an analysis of no significant hazards consideration in its request for a license amendment.

The licensee states that operation of LaSalle County Station Units 1 and 2, in accordance with the proposed amendments, will not:

(1) Involve a significant increase in the probability of consequences of any accident previously evaluated because no plant protective functions are changed by this amendment. The amendment is essentially administrative in nature by removing cycle-specific and fuel bundle type specific power distribution limits from the TS and placing them in a separate controlled document, the Core Operating Limits Report (COLR). The MCPR and MAPLHGR Bases section changes are also administrative. NRC approved methods will still be used to analyze reloads of NRC-approved fuel types to determine the results reported in the COLR in accordance with TS. The surveillance requirements for these power distribution limits remain unchanged. Additionally, previously analysed accidents are also not affected by the proposed changes to the fuel assemblies and control rod assemblies sections of the design features, since the changes do not allow the use of any types of fuel assemblies and control rod assemblies that have not been previously evaluated for use in the reactor core. These changes are being made to eliminate the design characteristics from the Technical Specifications since this information is fuel assembly and control rod assembly specific. Use of new types of fuel assemblies and control rod assemblies is evaluated in accordance with 10 CFR 50.92 and 10 CFR 50.59;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because it will not result in changes in the operating mode or configuration of the reactor core or any plant components; thus the change does not create any new accident type. The current spectrum of reactor transients and accident analyzed remains unchanged. The proposed change to the fuel assemblies and control rod assemblies sections of the design features does not allow the use of any types of fuel assemblies and control rod assemblies that have not been previously evaluated for use in the reactor core; thus the change does not create any new or different accident mode. The current spectrum of reactor transient and accident analyses remain unchanged. As new designs are developed, appropriate reviews will be conducted as required by 10 CFR 50.92 and 10 CFR 50.59 to ensure no new or different kind of accident scenario is created; and

(3) Involve a significant reduction in the margin of safety because the methods for determining fuel/core limits are not affected by this change. No revisions in the parameters required to verify operation with existing safety bases are involved (i.e., LHGR, MCPR and MAPLHGR are still the limits). No safety limits are changed. The change only removes cycle-specific and fuel bundle type specific power distribution limits from the TS and incorporates these limits into COLR. The plant will continue to be operated under these same power distribution limits, which will be calculated using NRC-approved methods. The MCPR and MAPLHGR Bases section changes are administrative and therefore no impact on margin of safety. The proposed change to the fuel assemblies and control rod assemblies section of the design features does not allow the use of any types of fuel assemblies and control rod assemblies that have not been previously evaluated for use in the reactor core. Any new type of fuel assemblies and control rod assemblies will be evaluated before use in the reactor core. This change only removes specific design characteristics of the fuel assemblies and control rod assemblies from the TS and does not impact any current Limiting Condition for Operation or Surveillance Requirements.

The staff has reviewed the licensee's evaluation of the proposed amendment and agrees with the licensee's conclusion. Therefore, the staff proposes to determine that the proposed change to the Technical Specifications does not involve significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Paul C. Shemanski, Acting Director

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: August 25, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications to delete all requirements on the steam/feedwater mismatch trip signal. This signal was not credited in any FSAR Chapter 15 accident analysis for its trip function. In those analyses, the slower-responding low level trip was conservatively

credited with causing reactor trip when the accidents occur.

Elimination of this function would yield the benefit of reduced challenges to plant safety systems. Plant safety could be enhanced when challenges to safety systems are reduced. In addition, surveillance/maintenance work needed for the Reactor Protection System would be lowered, resulting in reduced possibility of system interaction. The requested amendment is similar to one granted to Prairie Island Nuclear Power Station.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

As stated above, the subject trip function was not credited in any safety analysis; its elimination would not involve any change to any previous analysis. Furthermore, its functioning or failure was not considered a precursor to any accident. Hence the answer to the first criterion is negative.

No new equipment or system would be provided as a result of the amendment. Hence the answer to the second criterion is also negative.

No previous analytical assumptions would be changed and no acceptance criterion would be relaxed. Hence the answer to the third criterion is also negative.

The staff therefore proposes to determine that the requested amendment involves no significant hazards considerations.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: August 29, 1989

Description of amendment request: The proposed amendment would revise the Technical Specification to change the qualification requirements for members of the Independent Safety Evaluation Group (ISEG). The current requirement specifies that a member has a bachelor's degree in engineering or related science, and a minimum of 2 years of relevant experience. The revised requirement would permit two other options for some members of the ISEG: 5 years of nuclear experience and holding or has held a Senior Reactor Operator License, and 10 years professional level experience (5 years in the nuclear field).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The proposed change involves only the membership qualification of the ISEG. No system, component or operational procedure changes are involved with this amendment; hence the answers to criteria (1) and (2) are negative. No safety analysis assumptions or acceptance criteria are to be changed; hence the answer to criterion (3) is also negative.

The staff therefore proposes to determine that the requested amendment involves no significant hazards considerations.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: August 14, 1989

Description of amendment request: The proposed amendment would modify the Facility Operating License, NPF-49, by deleting the following license conditions: (1) 2.C(3), "Containment Average Temperature," (2) 2.C(4), "N-1 Loop Operation," (3) 2.C(6), "Instrumentation for Monitoring Post-Accident Conditions, R.G. 1.97, Revision 2 Requirements," (4) 2.C(8), "Moisture in Air Start System," (5) 2.C(8), "Operating Staff Experience Requirements," (6) 2.C(11), "Revised Small Break LOCA Methods to Show Compliance With 10 CFR 50.46, TMI Item I.K.3.31," (7) 2.C(12), "Safety Parameter Display System (SPDS)," and (8) 2.C(13), "Detailed Control Room Design Review."

The licensee has proposed that the above license conditions be deleted in that their subject provisions have been satisfied.

Basis for proposed no significant hazards consideration determination: On January 31, 1986, the NRC staff issued Facility Operating License No. NPF-49 to Northeast Nuclear Energy Company, et. al. (the licensee) for operation of Millstone Unit No. 3. As part of NPF-49, the NRC specified that certain actions, "License Conditions," were to be undertaken by the licensee. The license condition numbers correspond to sections within NPF-49. The satisfaction of these license condition is described below.

1. License Condition 2.C(3)--Containment Average Temperature

License Condition 2.C(3) in the Millstone Unit No. 3 Operating License requires that "Prior to start-up following the first refueling outage, the qualified life of electrical equipment within the scope of 10 CFR 50.49 located inside containment shall be recalculated based on the actual temperature monitored inside containment during the first cycle of operation." In a letter dated October 3, 1988, the NRC concluded that License Condition 2.C(3) had been met.

2. 2.C(4)--N-1 Loop Operation

License Condition 2.C(4) in the Millstone Unit No. 3 operating license prohibits three-loop operations until outstanding issues are resolved to the satisfaction of the NRC Staff. The NRC reviewed information presented by the licensee and concluded in a letter dated November 16, 1987 that the Staff's

concerns were satisfied and the license condition was met.

3. 2.C(6)—Instrumentation for Monitoring Post-Accident Conditions R.G. 1.97, Revision 2 Requirements

License Condition 2.C(6) requires that "NNECO shall install and have operational instrumentation to monitor containment sump water temperature at the first scheduled outage of sufficient duration after procurement is complete, but no later than start-up after the first refueling outage." In a letter dated October 21, 1987, the NRC informed NNECO that the Staff is currently generically reviewing the need for Category 2 instrumentation to monitor the containment sump water temperature, and the use of Category 3 instrumentation was acceptable for operation while their review is ongoing. In addition, the Staff concluded that License Condition 2.C(6) was satisfied.

4. 2.C(8)—Misture in Air Start System

License Condition 2.C(8) requires that "NNECO shall install air dryers in the emergency diesel air start system at the first scheduled outage of sufficient duration after procurement is completed, but no later than start-up after the first refueling outage." In response to this license condition, air drying skids were installed in each emergency diesel generator starting air system and made operational during the first refueling outage. In a letter dated January 21, 1988, NNECO confirmed the completion of actions to satisfy License Condition 2.C(8).

5. 2.C(9)—Operating Staff Experience Requirements

License Condition 2.C(9) specifies that each operating shift shall have a licensed senior operator or an advisor who had certain experience in the operation of facilities similar to Millstone Unit No. 3. In a letter dated July 9, 1986, the NRC confirmed that NNECO met license condition 2.C(9).

6. 2.C(11)—Revised Small Break LOCA Methods to Show Compliance With 10 CFR 50.46, TMI Item II.K.3.31

License Condition 2.C(11) required plant-specific analysis using NOTRUMP or a generic submittal referencing NOTRUMP. In a letter dated January 13, 1987, the NRC indicated that the Staff has reviewed WCAP 22245 and the information submitted in the licensee's letter dated June 6, 1986, and concluded that License Condition 2.C(11) had been met.

7. 2.C(12)—SPDS

License Condition 2.C(12) required that "Prior to restart following the first refueling outage, NNECO shall add to the Safety Parameter Display System

(SPDS) and have operational the following SPDS parameters:

- (i) Residual Heat Removal (RHR) flow"
- (ii) Containment Isolation
- (iii) Containment Hydrogen Concentration
- (iv) Primary Coolant System Hot Leg Temperature

In a letter dated March 7, 1988, the NRC staff concluded that license condition 2.C(12) had been satisfied.

8. 2.C(13)—Detailed Control Room Design Review

License Condition 2.C(13) required that "NNECO shall correct all human engineering discrepancies (HEDs) not resolved prior to exceeding 5 percent power, and according to the schedule specified in a letter from J. F. Opeka to V. S. Noonan dated January 29, 1986." In a letter dated January 13, 1987, the NRC concluded that License Condition 2.C(13) of the Millstone Unit No. 3 operating license had been satisfied.

As can be seen from the above, each license condition has been satisfied by the licensee.

Title 10, CFR 50.92, "Issuance of Amendment," contains standards for addressing the existence of no significant hazards considerations with regard to issuance of license amendments. The licensee has addressed the standards of 10 CFR 50.92, with regard to the proposed changes to the license associated with the August 14, 1989 application, as follows:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. Individual license conditions discussed above were one-time commitments that have been met. Their existence is no longer warranted; therefore, removal of license conditions is appropriate and safe. As a result of the proposed amendment, there are no physical changes to the facility and all operating procedures, limiting conditions for operation (LCO), limiting safety system settings, and safety limits specified in the Technical Specifications will remain unchanged.
2. Create the possibility of a new or different kind of accident from any previously evaluated. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.
3. Involve a significant reduction in a margin of safety. Plant safety margins are established through LCO, limiting safety system settings, and safety limits specified in the Technical Specifications. As a result of the proposed amendment, there will be no changes to either the physical design of the plant or to any of these settings and limits;

therefore, there will be no changes to any of the margins of safety.

The NRC staff has reviewed, and concurs in, the licensee's statement regarding "no significant hazards considerations" associated with the August 14, 1989 application for license amendment.

Accordingly, the staff has made a proposed determination that the application for amendment, dated August 14, 1989, involves no significant hazards consideration.

Local Public Document Room
location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: August 22, 1989

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3.4.3.3.7, "Fire Detection Instrumentation" as follows: (1) An incorrect reference to containment air temperature monitoring requirements would be corrected, (2) A definition of "not accessible during plant operation" would be incorporated in the TS as a footnote and (3) Changes would be made to the list of fire detectors contained in TS Table 3.3-11, "Fire Detection Instruments."

Basis for proposed no significant hazards consideration determination: At the present time, TS 3.3.3.7, Action b, references TS 4.6.1.6 regarding remedial action to be taken when required fire detectors inside containment become inoperable. The correct reference in TS 3.3.3.7 should be TS 4.6.1.5 rather than TS 4.6.1.6. The purpose of TS 4.6.1.5 is to allow containment temperature to be monitored in the event of a malfunction of the fire detection system. Section 4.6.1.6 deals with structural integrity and is incorrectly referenced under the existing TS 3.3.3.7.

On March 6, 1986, the NRC staff published, in the Federal Register (51 FR 7744) examples of Amendments that are not likely to involve significant hazards considerations. Example (i) involves, "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." Since the proposed change to TS 3.3.3.7 would correct an

error, the NRC staff proposes to determine that the change involves no significant hazards considerations.

The licensee has also proposed a change to TS 4.3.3.7.1. At the present time, TS 4.3.3.7.1 allows the licensee to delay the operational test for fire detectors, which are not accessible during plant operation, until the next cold shutdown exceeding 24 hours. The licensee has proposed that TS 4.3.3.7.1 be clarified by the addition of a footnote which identifies inaccessible fire detectors to include, "...detectors in the Reactor Containment, HIGH Radiation Areas, and areas contaminated in excess of 100,000 dpm per 100 cm²."

Finally, the licensee has proposed a change to TS Table 3.3-11. The proposed changes would correct inconsistencies between the TS and the actual location and numbers of fire detectors at Millstone Unit 3. Title 10, CFR 50.92, "Issuance of Amendment," contains standards for addressing the existence of no significant hazards considerations with regard to issuance of license amendments. In this regard, the proposed addition of the footnote to TS 4.3.3.7.1 and the changes to TS Table 3.3-11 would not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed changes to the TS do not in any way change the existing fire hazards analysis and thus no changes to probability or consequences of fires are involved.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The changes do not alter the way the plant is operated or any changes in plant equipment. The changes do not introduce new failure modes. For these reasons, the changes do not have the potential to create a new type of accident from that previously analyzed.

3. Involve a significant reduction in a margin of safety. Since no new safety analyses, plant equipment, or operational modes are associated with the proposed changes to the TS, no safety margins are reduced.

Based upon the above, the NRC staff proposes to determine that the proposed addition of the footnote to TS 4.3.3.7.1 and the proposed changes to TS Table 3.3-11 involve no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 8, 1989

Description of amendment request: The proposed changes to the Technical Specifications of the Fort Calhoun Station are required to incorporate modifications that will be made to the Control Room Air Treatment System as a result of a control room survey conducted by the NRC staff. This survey determined that excessive amounts of unfiltered air were being pulled into the control room envelope, and calculations performed by the licensee indicate that these amounts of unfiltered air would result in operators receiving more than the 30 REM thyroid dose limit allowed in a 30 day post accident period. The licensee has taken interim measures to protect the operators while the Control Room Air Treatment System was being evaluated and while the modifications are being incorporated into the design to rectify the problem.

The licensee's design modifications are to replace the existing single, 90% efficient charcoal filter unit with two full capacity 99% efficient filter trains. Calculations using these new filter trains indicate that the exposure is reduced and meets the GDC 19 dose limits from the combination of all sources of airborne radiation to the operators in the control room. In addition, the installation of the additional charcoal filters will introduce an increased fire load in room (Room 81) where these charcoal filters are located. The filters are equipped with fire detection and deluge systems that are designed to alert operators and extinguish any fires without reliance on existing fire protection equipment in the area. Therefore, two new fire zones are being added to the Technical Specifications as a result of this modification to the fire system.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of

a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

The proposed changes do not involve a significant hazards consideration because the operation of Fort Calhoun Station in accordance with this amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The charcoal contained in the new filter units will increase the fire loading in Room 81. However, the new fire loading sources will be equipped with new detection, monitoring, and deluge systems. The existing filter system is not equipped with fire detection, so this represents an increased level of fire detection capability. Therefore, the fire detection and suppression capabilities for the plant will not be degraded, and the consequences of an accident previously evaluated will not be increased.

Dose calculations show that the new filter system will prevent the operators from exceeding the 10 CFR 50 Appendix A GDC 19 dose limits from the combination of all sources of airborne radioactive iodine.

The consequences of an accident previously analyzed will not be increased because the testing requirements are being increased, resulting in a more efficient filter thus lowering the doses in the control room.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The addition of two new fire detection zones will not create a new or different kind of accident from any previously evaluated since there will be new monitoring and deluge systems installed for each new area.

The new filtration system will consist of redundant 99% efficient units rather than the single 90% efficient configuration that currently exists. This does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The new monitoring and deluge systems for each unit are designed to alert the operators and extinguish any fires without reliance on any existing fire protection equipment in the area. Since the units are equipped with their own monitoring and deluge systems, the margin of safety of any existing system is not reduced.

Dose calculation show that the existing single 90% efficient filter unit does not provide enough iodine removal capacity to achieve the design dose limit of 30 REM (SRP 6.4) to the thyroid. In addition, a review of the design requirements stated in R.G. 1.52 showed the existing filtration system and associated isolation dampers do not meet the redundancy criteria.

The new redundant 99% filter trains and associated bubble-tight dampers will provide the required iodine removal to meet the dose limit as well as all design requirements of

R.G. 1.52, (i.e., redundancy, local and remote indication, humidity control).

Therefore, it can be concluded that the new filtration system will not reduce the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room
location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebbon

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request:
September 8, 1989

Description of amendment request:
The proposed amendment is to correct an administrative error that was made when Amendment 32 was issued to change the surveillance method on Technical Specification Page 3-15, Table 3-3, Item 8 - Dropped CEA Indication. In the submittal of the application for the amendment, the surveillance method for Item 12 - Interlocks-Isolation Valves on Shutdown Cooling Line of Table 3 was inadvertently changed. This Item 12 was previously changed by Amendment 16. Amendment 32 changed Item 12 of Table 3-3 back to the original version of the Technical Specification thereby negating Amendment 16.

Basis for proposed no significant hazards consideration determination:
The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

The proposed change does not involve a significant hazards consideration because the

operation of Fort Calhoun Station in accordance with this amendment would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. This change corrects wording in Table 3-3, Item 12, that was altered inadvertently by an administrative error.

2. create the possibility of a new or different kind of accident from any previously analyzed. It has been determined that a new or different kind of accident will not be possible due to this change. This change is administrative and restores Table 3-3, Item 12 to the condition of the Safety Evaluation Report issued for Amendment 16.

3. involve a significant reduction in a margin of safety. The change is administrative and will not affect the conduct of the Surveillance Testing of Interlocks-Isolation Valves and the Shutdown Cooling Line presently in use.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room
location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebbon

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request:
September 6, 1989 (Reference LAR 89-11)

Description of amendment request:
The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to change the setpoint tolerance of the pressurizer and main steam line code safety valves from plus-or-minus 1 percent to plus-or-minus 3 percent, except for the lowest set pressure bank of main steam line safety valves, which would be changed to -2/+3 percent. Code safety valves at Diablo Canyon and other plants have incurred numerous surveillance test failures due to setpoint drift. This proposed change would reduce the number of test failures incurred and is supported by an analysis of the impact of an increased code safety valve tolerance band on plant operations.

The specific TS changes proposed would include revision of Sections 3.4.2.1 and 3.4.2.2 of TS 3/4.4.2, "Safety Valves," to change the setpoint

tolerance for the pressurizer code safety valves from plus-or-minus 1 percent to plus-or-minus 3 percent. Also, Table 3.7-2, "Steam Line Safety Valves per Loop," of TS 3/4.7.1, "Turbine Cycle," would be revised to change the setpoint tolerance for the main steam line code safety valves from plus-or-minus 1 percent to plus-or-minus 3 percent, except for the lowest set pressure bank of valves, which would be changed to -2/+3 percent. TS Bases 3/4.7.1.1, "Safety Valves," would be revised to reference the correct secondary system design pressure and overpressure limit.

Basis for proposed no significant hazards consideration determination:
The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee, in its submittal of September 6, 1989, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The pressurizer and main steam line safety valves are designed to mitigate transients by preventing overpressurization of the RCS and MSS. The proposed change does not alter this design basis. The revised analysis shows that the probability or consequences of all previously analyzed accidents are not changed by increasing the setpoint tolerance of the safety valves.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There is no physical alteration to any plant system, nor is there a change in the method in which any safety related system performs its function. Any pressurizer safety valve lifting at the extremes of the proposed tolerance will not result in a low lift setpoint that is less than the pressurizer high pressure reactor trip

or a high lift setpoint that allows RCS overpressurization. Any main steam safety valve lifting at the extremes of the proposed tolerance will not result in a low lift setpoint that is less than the normal "no load" system pressure or a high lift setpoint that allows MSS overpressurization.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

With the increased setpoint tolerances, the pressurizer and main steam line safety valves will still prevent pressure from exceeding 110 percent of design pressure in accordance with the ASME code. All conclusions for the FSAR Update accident analyses are not affected by the change and remain valid.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC Staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the Staff proposes to determine that these changes do not involve significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: George W. Knighton

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: August 8, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to ensure the design level of counting certainty is maintained at all times for the Source Range Monitors (SRMs). The Limerick Unit 1 TS presently allow reduction of the minimum SRM count rate required for control rod withdrawal or core alterations from the normal 3 counts per second (cps) to 0.7 cps as long as the signal-to-noise ratio is greater than or equal to two. General Electric Company (GE) has advised licensees that this provision is non-conservative with respect to the design bases of the SRM system, in that utilization of this provision could result in a reduction in counting certainty. In

order to ensure that the design level of counting certainty is maintained, a change to the TS is proposed to incorporate a graph of SRM minimum count rate versus signal-to-noise ratio such that reduction of the count rate permitted by TS (3 cps to 0.8 cps) is accompanied by a corresponding increase in the signal-to-noise ratio (2 to 30).

Similar amendments were recently approved for Peach Bottom Units 2 and 3 (Amendment Nos. 147 and 149 to Facility Operating License Nos. DPR-44 and DPR-56 dated August 28, 1989).

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of no significant hazards considerations with the request for the license amendment. The licensee's analysis of the proposed amendment against the three standards in 10 CFR 50.92 is reproduced below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes reduce the minimum SRM count rate required to permit core alterations during reactor refueling and withdrawal of control rods during reactor startup. The proposed count rate is still within the design range of the SRM and specifying a signal-to-noise ratio assures the SRMs are responding to thermal neutron flux. No hardware changes are required to the SRM system, therefore malfunction of an SRM will still produce the required control rod withdrawal blocks.

The applicable accidents related to the proposed change are those involving SRMs during reactor startup (control rod drop accident (RDA) and continuous control rod withdrawal, and those involving SRMs during reactor refueling (i.e., control rod removal error during refueling, a second control rod removal or withdrawal, fuel insertion with the control rod withdrawn, and a control rod removal without the fuel removed). No credit is taken for the SRMs in any of these accidents.

The RDA is the more limiting accident during reactor startup. Chapter 15 (Section 15.4.9) of the FSAR assumes an initial condition of 10^{-6} of rated power with the

reactor critical in the analysis of transient cold conditions including the RDA. Therefore, reduction of the minimum SRM count rate required to permit withdrawal of control rods as shown in Figure 3.3.6-1 still ensures that criticality will be achieved well above 10^{-6} of rated power.

Accordingly, this proposed change does not affect the probability of consequences of previously evaluated accidents.

The nuclear characteristics of the core assure that the reactor is subcritical even at its most reactive condition with the most reactive control rod withdrawn during refueling. When the mode switch is in REFUEL, only one control rod can be withdrawn. Selection of a second control rod initiates a control rod block, thereby preventing the withdrawal of more than one control rod at a time. Therefore, the refueling interlocks prevent any condition which could lead to inadvertent criticality due to a control rod withdrawal error during refueling. Further, the mechanical design of the control rod, incorporating the velocity limiter, does not physically permit the upward removal of the control rod without the simultaneous or prior removal of the four adjacent fuel assemblies, thus eliminating any hazardous condition. In addition, the refueling interlocks require that all control rods must be fully inserted before a fuel assembly may be inserted into the core.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No hardware modifications are required to implement this change. The design functions of the SRM system are not being changed. The only effect of this proposed change is a reduction in the minimum count rate required for control rod withdrawal and reactor core alterations. The reduced minimum count rate, which must be accompanied by a corresponding increase in signal-to-noise ratio, will continue to assure that all transients begin above 10^{-6} of rated power, thereby maintaining the validity of the FSAR analysis.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The normal requirement of at least 3 cps assures that any transient, should it occur, begins at or above the initial value of 10^{-6} of rated power with the reactor critical as used in analysis of transient cold conditions. In fact, any observable neutron count rate on the SRM is sufficient to ensure the analysis remains valid. Therefore, reduction of the minimum count rate from 3 cps to the values shown in Figure 3.3.6-1 will not reduce this margin of safety because any transient will still begin at or above 10^{-6} of rated power with the reactor critical. Further, the SRMs are not required to ensure the margin of safety as analyzed in Chapter 15 of the FSAR.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92(c). Based on that conclusion, the staff proposes to make a "no significant hazards" determination.

Local Public Document Room

location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: June 30, 1989

Description of amendment request: The following changes are proposed to the Trojan Technical Specification (TTS) Section 6.0, "Administrative Controls".

1. Organizational title in Sections 6.1.1, 6.5.1.1, 6.5.1.7.a, 6.5.1.7.c, and 6.14.2.b changed from "General Manager" to "Plant General Manager".

2. Responsibility for the direction of the Training Department in Sections 6.4.1 and 6.4.2 changed from "the General Manager" to "a General Manager".

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

1. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is organizational in nature and has no impact on Plant systems or their overall performance in any manner that could lead to an accident. The purpose of the change is to more effectively utilize the company resources for operating the Trojan Nuclear Plant. The probability or consequences of an accident previously evaluated are not increased.

2. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed change is organizational in nature, and has no role in creating the possibility of any accidents.

3. This change does not involve a significant reduction in a margin of safety.

As discussed above, the proposed change is organizational in nature and has no impact on the accident analysis. Therefore, the margin of safety is not affected.

In the March 6, 1986 Federal Register (51 FR 7750), the NRC published a list of examples of license amendments that are not likely to involve a significant hazards consideration. One of the examples is: "A purely administrative change to technical specifications, e.g., a change to achieve a consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change is similar to this example, inasmuch as the proposed changes would (1) reflect the current organization and (2) achieve consistency in the technical specifications. In addition, the staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Project Director: George W. Knighton

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: July 14, 1989

Description of amendment request: The proposed amendment would correct Note 1 of Table 3.2-3, "Instrumentation That Initiates Control Rod Blocks." The present wording states that the Average Power Range Monitor (APRM) rod blocks are not required in the start-up mode. This contradicts both the body of Table 3.2-3 which indicates a separate trip level setting for the APRM instrumentation in the start-up mode (less than or equal to 12%) and Table 3.1-1, "Reactor Protection System (SCRAM) Instrumentation Requirement," which requires that two APRM instrument channels per trip system must be operable in the startup mode. Therefore, the proposed change to Note 1 would specify that the APRM Upscale (Start-up Mode) rod block is required to be operable when the reactor is in the startup mode. Also, as

further clarification, the proposed change to the note would indicate that the APRM Upscale (Flow Biased) and the Downscale rod blocks are required to be operable when the reactor is in the run mode.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed change is administrative in nature and would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The change corrects Note 1 to Table 3.2-3 to clearly identify the APRM rod blocks [which are] required during start-up operations. This change is purely editorial in nature and does not involve the modification of any existing safety structures, systems, or components. There are no changes in probability or consequences to the plant's accident analyses as documented in the FSAR [Final Safety Analysis Report] or the NRC staff's SER [Safety Evaluation Report].

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed change is purely editorial in nature with no resulting impacts on plant parameters or operational procedures. This change does not create any new failure modes or accident scenarios.

3. involve a significant reduction in the margin of safety. The proposed change does not alter any established trip level settings nor does it revise the start-up procedure. This change does not relax any administrative controls or limitations imposed on the existing plant equipment; nor does it involve the modification of any system or component. This change is purely editorial in nature and does not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes

do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Tennessee Valley Authority Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: August 9, 1989 (TS 274)

Description of amendment requests: The proposed amendments would revise Sections 3.5.E.1 and 3.5.F.1 to require the High Pressure Coolant Injection (HPCI) System and the Reactor Core Isolation Cooling (RCIC) System to be operable after reactor pressure reaches 150 psig. The current sections require HPCI and RCIC to be operable at reactor pressures greater than 122 psig. This change would bring the Browns Ferry Technical Specifications (TS) into conformance with the design capabilities of HPCI and RCIC as defined in Chapters 6.3 and 14 of the Browns Ferry Final Safety Analyses Report (FSAR). In addition, the proposed amendments would revise the applicable surveillance (Sections 4.5.E.1.a and e, and 4.5.F.1.c and e) for these two sections to read "once/18 months" rather than "once/operating cycle." An 'operating cycle' at Browns Ferry is normally expected to be 18 months in duration.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment requires the HPCI/RCIC systems to be operable when reactor pressure is greater than 150 psig instead of 122 psig as currently stated in the TS. Additionally, this amendment allows demonstrating HPCI/RCIC operability within

12 hours after sufficient reactor steam pressure becomes available during a cold startup. This revision brings the BFN TS into technical agreement with the analyzed operating range and design specifications of the HPCI/RCIC systems. The HPCI and RCIC systems provide full design flow in the reactor pressure range of 150 to 1120 psig with their isolation setpoints greater than 100 psig and greater than 50 psig reactor pressure respectively. The shutoff head for the Core Spray System and RHR/LPCI are 285 psig and 295 psig respectively. These low pressure coolant systems will begin injecting flow into the vessel at approximately 230 psig and continue providing adequate core cooling down to zero reactor pressure. Thus, it can be seen that there is considerable overlap with the HPCI/RCIC systems and the low pressure CS/LPCI systems before cutoff of the high pressure systems below 150 psig. Therefore the high pressure systems are not required to provide core cooling below 150 psig. Based on this, no adverse effects on safety are encountered in raising the operability requirements of the HPCI/RCIC systems from 122 psig to 150 psig.

Since there is an overlap between the high pressure injection systems and the low pressure injection systems, there is more than adequate core cooling capability to ensure that the reactor core remains covered as analyzed in the BFN Final Safety Analysis Report (FSAR). With this overlap, allowing the reactor pressure to be at or above 150 psig for twelve hours while demonstrating the HPCI/RCIC systems to be operable, will not increase the probability or consequences of an accident as previously evaluated in the BFN FSAR.

Revising the surveillance requirements from once per operating cycle to once every 18 months provides consistency with other BFN TS, industry standard practices, and NRC guidelines. Using the plus 25 percent allowed by TS, there could be a maximum of 22.5 months between surveillance tests. There are additional surveillance requirements that are performed at lesser frequencies which demonstrate pump operability. The simulated automatic actuation test and the pump flow rate at 150 psig are tested once per 18 months. The pump operability, and motor-operated valve operability are tested in accordance with ASME Section XI testing. In addition, the flow rate at normal reactor vessel operating pressure is tested once per 3 months. Performance of these tests provides adequate assurance that the HPCI/RCIC systems will perform their intended function.

These proposed change do not involve any physical alteration of the plant or add any new equipment which could be the source of a malfunction or accident. Based on the above, this proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

The proposed changes do not add any new equipment or require any existing equipment

to operate outside its design specifications. Operating BFN under the requirements of the proposed TS does not alter the function of any instrumentation, involve any type of modification to the plant, introduce a new or different release pathway of any radioactive material to the environment, or create any new modes of operation that have not previously been analyzed. Implementation of this proposed change is consistent with and remains within the bounds of the BFN FSAR analysis.

3. This proposed change does not involve a significant reduction in a margin of safety.

As stated above, there is considerable overlap with the high pressure HPCI/RCIC systems and the low pressure CS/LPCI systems before cutoff of the high pressure systems below 150 psig reactor pressure. Therefore, HPCI/RCIC are not required to provide core cooling below 150 psig. Consequently, there is no significant reduction in the margin of safety by raising the operability requirements from 122 psig to 150 psig. In addition, the plant's operating flexibility is enhanced by leaving in the option, that is currently in the TS, to demonstrate HPCI/RCIC operability with auxiliary steam.

Considering the low reactor pressure, the redundancy and availability of the low pressure systems during startup from a Cold Condition, twelve hours is a reasonable time to demonstrate HPCI/RCIC operability once steam of sufficient pressure is available. This relatively short time frame will not create any significant increase in the risk associated with the unavailability of the HPCI/RCIC than has already been evaluated in the seven day out-of-service time that is typical industry practice. Therefore, it is concluded that there will be no significant reduction in the margin of safety due to implementing these TS operability requirements.

Revising the surveillance frequency requirements is consistent with other BFN TS. BFN fuel is not designed to operate for 22.5 months at continuous full power operation. Changing the surveillance requirements to once every 18 months does not exceed the design limits nor change the intent of the existing TS.

The staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 18, 1989, supplemented on August 21, 1989 (NLR-N89160) (LCR 89-12, Rev. 1)

Brief description of amendment request: Remove fuel cycle-specific operating limits from the Technical Specifications.

Date of publication of individual notice in Federal Register: September 19, 1989 (54 FR 38577)

Expiration date of individual notice: October 19, 1989

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 21, 1989

Brief description of amendment request: The amendment would change the description of fuel and control rod assemblies.

Date of publication of individual notice in Federal Register: September 15, 1989 (54 FR 38306)

Expiration date of individual notice: Comment period expired October 2, 1989; Notice period expires October 16, 1989.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 29 and August 31, 1989

Brief description of amendment request: The amendments will allow an individual who does not hold a current, valid senior reactor operator's license to assume the duties of the Operations Manager for the Salem Units 1 and 2.

Date of publication of individual notice in Federal Register: September 15, 1989 (54 FR 38304)

Expiration date of individual notice: Comment period expires October 2, 1989; Notice period expires October 16, 1989.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for

amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of application for amendment: January 12, 1989

Brief description of amendment: The amendment revises the Technical Specifications to incorporate cycle specific changes in support of Cycle 3 operation.

Date of issuance: September 19, 1989

Effective date: September 19, 1989

Amendment No.: 44

Facility Operating License No. NPF-41: Amendment changed the Technical Specifications.

Date of initial notice in Federal Register: March 22, 1989 (54 FR 11834). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: June 16, 1988 as supplemented on April 27, 1989.

Brief description of amendment: The amendment revised the Technical Specification surveillance test frequency requirements for the radiation monitoring system.

Date of issuance: September 12, 1989

Effective date: September 12, 1989

Amendment No.: 126

Facility Operating License No. DPR-51: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 9, 1989 (54 FR 32705). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: May 26, 1989

Brief description of amendment: The amendment revised Attachment 2 to the operating license to not perform diesel generator air-roll tests if the other diesel generator is already inoperable. It also made an administrative change to correctly reflect the most recently issued Safety Evaluation related to diesel maintenance/surveillance.

Date of issuance: September 15, 1989

Effective date: September 15, 1989

Amendment No.: 24

Facility Operating License No. NPF-58: This amendment revised Attachment 2 to the operating license.

Date of initial notice in Federal Register: July 12, 1989 (54 FR 29402) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: August 23, 1989

Brief description of amendment: The amendment permits the use of functioning channels of the Traversing In-Core Probes (TIP) System to provide necessary data when up to ten of the TIP measurement locations are inaccessible or inoperable.

Date of Issuance: September 22, 1989

Effective Date: September 22, 1989

Amendment No.: 25

Facility Operating License No. NPF-58: This amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (54 FR 35955, August 30, 1989). That notice provided an opportunity to submit comments on the Commission's

proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by September 29, 1989, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Ohio, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 22, 1989.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

NRC Project Director: John N. Hannon.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut; Northeast Nuclear Energy Company, et al; Millstone Units 1, 2, and 3, New London County, Connecticut

Date of application for amendment: June 29, 1989

Brief description of amendment: The amendments change Technical Specifications (TS) 4.10.1.D.1.h for the Haddam Neck Plant and TS 4.4.5.4.a.8 for Millstone Unit 3. The change to the TS allows the licensees to inspect steam generator tubes by insertion of the ultrasonic test probe from the cold leg side of the steam generator tube.

Date of Issuance: September 11, 1989

Effective date: September 11, 1989

Amendment Nos.: 123, 41

Facility Operating License Nos. DPR-61 and NPF-49: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 9, 1989 (54 FR 32708) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 11, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457, and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 4, 1988

Brief description of amendment: This amendment revises Technical Specification Table 3.17.4, Instrument Operating Requirements for Other Safety Feature Functions, and Table 4.1.3, Minimum Frequencies for Checks, Calibrations, and Testing of Miscellaneous Instrumentation and Controls. Specifically, the operability requirements for the subcooling margin monitor are extended from 515°F and greater to 325°F and greater, and operability and surveillance requirements for the reactor vessel level monitoring system are added to the Technical Specifications.

Date of Issuance: September 15, 1989

Effective date: September 15, 1989

Amendment No.: 129

Provisional Operating License No. DPR-20: The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: October 11, 1988 (53 FR 39666). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: June 9, 1989

Brief description of amendments: The amendments revised Technical Specification 3.7.8 to allow a one-time outage of ten days to change out power circuit breaker 9.

Date of issuance: September 12, 1989

Effective date: September 12, 1989

Amendment Nos.: 175, 175, and 172

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 12, 1989 (54 FR 29405) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 1989 and an Environmental Assessment dated September 1, 1989 (54 FR 37514).

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Florida Power Corporation, et al.,
Docket No. 50-302, Crystal River Unit
No. 3 Nuclear Generating Plant, Citrus
County, Florida

Date of application for amendment:
June 12, 1989

Brief description of amendment: This amendment changes the TS to allow an alternate method for calculating containment leakage rates.

Date of issuance: September 12, 1989

Effective date: September 12, 1989

Amendment No.: 120

Facility Operating License No. DPR-
72. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 26, 1989 (54 FR 31106) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room

Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: May 9, 1989, as supplemented July 28 and August 14, 1989.

Brief description of amendments: The amendments modified the Technical Specifications to revise requirements regarding containment tendon surveillance.

Date of issuance: September 12, 1989

Effective date: September 12, 1989

Amendment Nos.: 23 and 4

Facility Operating License Nos. NPF-
68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 14, 1989 (54 FR 25374) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room

Location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: February 23, 1988, as supplemented March 30, 1988.

Description of amendment request: The proposed change will revise the onsite personnel organization.

Date of issuance: September 13, 1989

Effective date: September 13, 1989

Amendment No.: 27

Facility Operating License No. NPF-
62. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 10, 1988 (53 FR 30135) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room

Location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 1, 1989

Brief description of amendment: The amendment added a license condition to allow the sale and leaseback of an individual ownership interest in the Waterford Steam Electric Station, Unit No. 3.

Date of issuance: September 18, 1989

Effective date: September 18, 1989

Amendment No.: 57

Facility Operating License No. NPF-
38. Amendment revised the license.

Date of initial notice in Federal Register: May 17, 1989 (54 FR 21309) and for Antitrust June 2, 1989 (54 FR 23723).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room

Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: March 7, 1989

Brief description of amendment: This amendment revises the Technical Specifications to permit the use of up to two alternates in meeting the quorum requirement for the plant Operations Committee. The plant Operations Committee consists of at least six members drawn from the key supervisors of the Onsite Supervisory Staff whose responsibilities include the review of: (1) modifications for plant systems or components described in the Updated Safety Analysis Report; (2) changes to normal and emergency

operating procedures; (3) proposed Technical Specification changes; and (4) the results of Technical Specification violation investigations.

Date of issuance: September 12, 1989

Effective date: September 12, 1989

Amendment No.: 69

Facility Operating License No. DPR-
22. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15832) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room

Location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: July 7, 1988

Brief description of amendment: This amendment changed the Technical Specifications involving the operating limits for all fuel types for Cycle 8 operation, the slope of the Average Power Range Monitor scram and rod block setpoints and administrative changes to the Bases.

Date of issuance: September 1, 1989

Effective date: September 1, 1989

Amendment No.: 150

Facility Operating License No. DPR-
56: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 28, 1989 (54 FR 27234) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1989.

No significant hazards consideration comments received: No

Local Public Document Room

Location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: November 10, 1988, supplemented July 24, 1989.

Brief description of amendment: The amendment revises the Technical Specifications to eliminate organization charts, Figures 6.2-1 and 6.2-2.

Date of issuance: September 8, 1989

Effective date: September 8, 1989

Amendment No.: 89

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 11, 1989 (54 FR 1023) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 8, 1989

Brief description of amendment: The amendment changes the Technical Specifications (TS) Table 1.2, "Operational Conditions," and TS 3/4.9.1, "Reactor Mode Switch," to allow movement of a single control rod with the reactor in hot shutdown or cold shutdown for purposes such as venting of the control rod drive, timing of the control rod scram and friction testing of the control rod. The TS had previously permitted movement of a control rod in these operational conditions to recouple it to its drive.

Date of issuance: September 15, 1989

Effective date: September 15, 1989

Amendment No.: 23

Facility Operating License No. NPF-29: This amendment revises the Technical Specifications.

Date of initial notice in Federal Register: July 12, 1989 (54 FR 29412) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendment: June 20, 1989, as supplemented by the letter dated August 10, 1989 (TS 89-24).

Brief description of amendment: This amendment modifies the Sequoyah Nuclear Plant, Unit 1, Technical

Specifications. The change revises Surveillance Requirement (SR) 4.6.5.1.b.2 to allow Unit 1 a one-time extension to the next refueling outage for weighing ice baskets in the containment ice condenser. A footnote is added to the current requirement that the SR be performed at least once every 12 months. The footnote states that the SR will be performed in the Unit 1 Cycle 4 refueling outage, which shall begin no later than April 1, 1990. The supplemental information provided in the licensee's August 10, 1989 letter did not change the substance of the Notice of Consideration for Amendment which was published in the **Federal Register** on July 21, 1989.

Date of issuance: September 19, 1989

Effective date: September 19, 1989

Amendment Nos.: 126

Facility Operating License No. DPR-77: Amendment revised the Technical specifications

Date of initial notice in Federal Register: July 12, 1989 (54 FR 29414). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: August 26, 1988 (TS 254)

Brief description of amendment: This amendment updates the Unit 2 Technical Specifications to reflect revised reactor core operating limits for Unit 2 Cycle 6 operation.

Date of issuance: September 13, 1989

Effective date: September 13, 1989, and shall be implemented within 90 days

Amendment No.: 172

Facility Operating License No. DPR-52: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 30, 1988 (53 FR 48336) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: October 16, 1987

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to reflect existing operating procedures which require at least one operator in the control panel area when fuel is in the reactor, at least two licensed operators, one with a senior operator license, in the Control Room while the plant is in Operational Modes 1 through 4, and at least two senior operators onsite while the plant is in Modes 1 through 4.

Date of issuance: September 20, 1989

Effective date: September 20, 1989

Amendment No.: 137

Facility Operating License No. NPF-3: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 26, 1989 (54 FR 31119) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: March 8, 1988

Brief description of amendment: This amendment revised the Technical Specifications to reflect changes in organization, positions and titles. The changes include the separation of the Chemistry and Health Physics Department reflected by the change in title of the Chemistry and Health Physics General Superintendent to Radiological Controls Superintendent. This title change is also reflected in the Station Review Board membership. Also, the changes revise the position of the Performance Engineering Manager to reflect the elevation of this position to the director's level with the title of the Performance Engineering Director, and changes the title of Senior Vice President, Nuclear, to Vice President, Nuclear.

Date of issuance: September 20, 1989

Effective date: September 20, 1989

Amendment No.: 138

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 28, 1989 (54 FR 27241) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 12, 1989, as supplemented on July 14, 1989.

Brief description of amendment: The amendment revises the Technical Specifications (TS) to eliminate cycle-specific parameter limits, and instead refer to a Core Operating Limit Report for the value of these parameters.

Date of issuance: September 15, 1989
Effective date: 30 days after issuance
Amendment No. 116

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications and/or License.

Date of initial notice in Federal Register: June 28, 1989 (54 FR 27243). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: July 12, 1989, as supplemented July 26, 1989 (partial).

Brief description of amendments: The amendments revise the NA-1&2 TS 3/4 3.2.1 from monthly to quarterly testing for selected Engineered Safety Features (ESF) Slave Relays. Other changes requested will be addressed at a later date.

Date of issuance: September 7, 1989
Effective date: September 7, 1989
Amendment Nos.: 123 and 107
Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 8, 1989 (54 FR 32729) The Commission's related evaluation of

the amendments is contained in a Safety Evaluation dated September 7, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: July 24, 1989

Brief description of amendments: These amendments add the Superintendent-Engineering to the list of specified members of the Station Nuclear Safety and Operating Committee.

Date of issuance: September 13, 1989
Effective date: September 13, 1989
Amendment Nos.: 133 and 133
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 9, 1989 (54 FR 32721) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185
Dated at Rockville, Maryland, this 27th day of September, 1989.

For the Nuclear Regulatory Commission
Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation
[Doc. 89-23302 Filed 10-3-89; 8:45 am]

BILLING CODE 7590-01-D

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: New.

2. The title of the information collection: 48 CFR chapter 20, Nuclear

Regulatory Commission Acquisition Regulation (NRCAR).

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion; one time.

5. Who will be required or asked to report: Offerors responding to NRC solicitations and contractors receiving contract awards from NRC.

6. An estimate of the number of responses: 10,045.

7. An estimate of the burden per response: 12 hours.

8. An estimate of the total number of hours needed to complete the requirement or request: 115,420.

9. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

10. Abstract: The NRCAR is necessary to implement and supplement the government-wide Federal Acquisition Regulation, and to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the needs of the agency.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Comments and questions can be directed to the OMB reviewer as follows: Nicolas B. Garcia, Paperwork Reduction Project (3150-xxxx), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395-3084.

The NRC clearance officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 25th day of September 1989.

For the Nuclear Regulatory Commission,
Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-23399 Filed 10-3-89; 8:45 am]

BILLING CODE 7590-01-M

GPU Nuclear Corp., Forked River Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order Revoking Construction Permit No. CPPR-96 which authorized construction of the Forked River Nuclear Plant, Unit 1 located in Ocean County, New Jersey. The construction permit is held by the GPU Nuclear Corporation (GPUN). The latest construction completion date in the permit is February 2, 1983. Construction activities at this site were

discontinued on April 3, 1979. By letter dated July 12, 1988, GPUN requested that the construction permit for Forked River be withdrawn.

Environmental Assessment

Identification of Proposed Action: The proposed action is to issue an order that would terminate Construction Permit No. CPPR-96 for the Forked River Nuclear Plant, Unit 1. This action was requested by GPUN because it does not plan to complete the plant.

The staff conducted an inspection of the Forked River site on March 15, 1989, to determine, among other things, whether GPUN's site stabilization plan, described in a summary attached to the July 12, 1988, GPUN letter, had been satisfactorily completed and to determine whether the site stabilization plan considered all critical site areas. A particular effort was made to inspect areas of the site that could be subject to continued erosion and contribute silt to surface water-bodies. Based on the inspection and its review of the site stabilization plan, the staff has not identified any area at the site that required attention that was not covered in the GPUN stabilization plan. Additionally, the site was found to be adequately stabilized and there were no areas where erosion could lead to detrimental offsite environmental impact.

The staff concludes, based on its review and inspection, that the Forked River site is in an environmentally stable condition.

Need for Proposed Action: GPUN has terminated construction of the nuclear power plant. This action by NRC would terminate the construction permit.

Environmental Impacts of the Proposed Action: This is a simple administrative action of terminating the outstanding permit to reflect the fact that there are no longer nuclear utilization facilities under construction at the Forked River site and the site has been adequately stabilized.

Alternatives to the Proposed Action and Alternative Use of Resources: This action, for which there are no appropriate alternatives, does not involve the use of and, therefore, will not affect, available resources.

Agencies and Persons Consulted: The NRC staff reviewed GPUN's request for termination of the construction permit and conducted the environmental review and inspection of the facility. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact

statement for this proposed action. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the GPUN's request for termination of Construction Permit No. CPPR-96 dated July 12, 1988, GPUN's site stabilization report transmitted by the July 12, 1988, letter, and the NRC Staff Evaluation dated September 27, 1989. These documents regarding the NRC staff's environmental assessment of the proposed action are available for public inspection at the Commission's Public Document Room, Washington, DC 20555. Correspondence concerning this facility will continue to be maintained at this location for at least one year.

Dated at Rockville, Maryland, this 27th day of September, 1989.

For the Nuclear Regulatory Commission,
John F. Stolz,
Director, Project Directorate I-4, Division of
Reactor Projects—I/II, Office of Nuclear
Reactor Regulation.
[FR Doc. 89-23402 Filed 10-3-89; 8:45 am]
BILLING CODE 7590-01-M

Boston Edison Co. (Pilgrim Nuclear Power Station); Exemption

[Docket No. 50-293]

I.

The Boston Edison Company (BEC), the licensee, is the holder of Operating License No. DPR-35 which authorizes operation of the Pilgrim Nuclear Power Station (PNPS). The license provides, among other things, that the PNPS is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor at the licensee's site located in Plymouth County, Massachusetts.

II.

Section III.D.(a) of Appendix J to 10 CFR part 50 requires that a Type A Primary Containment Integrated Leak Rate Test (PCILRT) be performed at approximately equal intervals during each 10-year service period. Section III.A.6(a) of Appendix J to 10 CFR part 50 requires that if any periodic Type A test fails to meet the applicable NRC acceptance criteria, a review of the test schedule be performed and approved by the Commission. Section 111.A.6(b) of Appendix J also requires that if two consecutive periodic Type A tests fail to meet the applicable NRC acceptance criteria, a Type A test shall be

performed at each subsequent refueling outage or approximately every 18 months, whichever comes first, until two consecutive Type A tests meet the acceptance criteria given in Section III.A.5(b).

Section III.D.2.(a) of Appendix J to 10 CFR part 50 requires that Type B Local Leak Rate Tests (LLRTs), except tests for air locks, shall be performed during reactor shutdowns for refueling, or other convenient interval, but in no case at intervals greater than two years.

Section III.D.3 of Appendix J to 10 CFR part 50 requires that Type C LLRTs shall be performed during each reactor shutdown for refueling, but in no case at intervals greater than two years, for containment isolation valves.

III.

The PCILRTs performed during the 1982, 1983, and 1987 refueling outages of the PNPS were deemed failures in the "as-found" condition due to penalties as the result of leakage from the pathways of the Type B and C LLRTs. Accordingly, the licensee would be required to perform a PCILRT during the surveillance outage scheduled for October 1989. As an alternative to performing the required Type A test, the licensee has submitted a Corrective Action Plan to eliminate excessive local leakage in accordance with the guidance provided in NRC Information Notice 85-71, "Containment Integrated Leak Rate Tests," dated August 22, 1985. The Corrective Action Plan is in lieu of the increased test frequency required by Section III.A.6(b) of Appendix J to 10 CFR Part 50. Therefore, an exemption from this requirement is needed.

The Corrective Action Plan includes a LLRT Failure Analysis Team to investigate LLRT failures, determine root causes, and recommend corrective actions. The plan also includes a trending program, test method improvements and augmented testing. Analysis of failures during the last refueling outage (RFO-7) and corrective actions for all LLRT failures were implemented resulting in the "as-left" PCILRT at PNPS in December of 1987, being the lowest leakage in the plant's history. As part of the augmented testing portion of the plan, two additional LLRTs have been performed subsequent to the corrective actions implemented in December of 1987. These tests verified that the root cause analyses and corrective actions were successful. LLRTs will be performed during the upcoming maintenance outage in the Spring of 1990, with the exception of specific penetrations which will be discussed later. The licensee further

indicates that LLRTs will be conducted during any planned outage of greater than 30 days at PNPS. The penetrations selected for the tests will be based on the results of the trending portion of the Corrective Action Plan. This Plan will result in the completion of five full sets of LLRTs between June 1987 and June 1991; this exceeds Appendix J requirements. In addition, the licensee previously initiated a Valve Betterment Program which has resulted in the replacement of 17 valves and modifications to 12 other valves which were identified as having excessive leakage.

The Corrective Action Plan includes long term corrective actions in addition to augmented testing and trending. These actions include the opening and inspection of at least one feedwater check valve and line loading or replacement of packing in the main drain outboard isolation valves during each refueling outage; and procurement of spare parts, such as seats, bronze bushings and associated hardware for the torus main exhaust valves. It should be noted, that the major portion of the leakage (about 83%) as the result of the LLRTs performed in December 1987, was due to the feedwater check valves. The short term replacement of problem components in the valves and the long-term effort previously discussed, has resulted in successful testing to date.

The licensee's Corrective Action Plan, Valve Betterment Program and recent results of the LLRTs will provide an equivalent level of protection as that provided by the more frequent testing requirement by Section III.A.6(b) for Type A PCILRT. The staff concludes that a one-time extension until RFO-8 and a return to the normal Type A test schedule of Section III.D of Appendix J to 10 CFR part 50 is justified. This conclusion is based on the next Type A test, which will be performed during RFO-8, meeting the established NRC acceptance criteria. If the criteria is not met, the licensee shall revert to the more frequent testing requirement of Section III.A.6(b).

A one-time schedule exemption from the test interval requirement of Section III.D.2(a) of Appendix J to 10 CFR part 50 for the drywell head and the drywell head access hatch is needed due to the extent of the work required to be performed and resultant worker exposure to radiation, which would result, if the tests were required to be performed during the upcoming outage in October 1989. Nine shield blocks above the drywell must be removed. These are normally removed only during refueling outages, such as the upcoming

RFO-8, to allow removal of the reactor head for fuel unloading and loading.

The drywell head and access hatch have exhibited minimum leakage which is only detectable on the most sensitive scale of the measuring instrumentation for all previous LLRTs. The request provides only temporary relief for approximately six months from the maximum two-year test interval required by Section III.D.2(a) of Appendix J to 10 CFR part 50.

The staff concludes that the accelerated LLRTs, previous test history, the extent of work required, resulting worker exposure to radiation and the short interval of the extension, support the requested one-time schedule extension of six months.

The one-time schedule exemption from the requirement of Section III.D.3 of Appendix J to 10 CFR part 50 is requested for the Shutdown Cooling Suction Isolation Valves (MO-1001-47 and MO-1001-50) and Reactor Building Closed Cooling Water (RBCCW) Isolation Valves (MO-4002 and Check Valve 30-CK-432).

The schedule extension for the Shutdown Cooling Suction Isolation valves is needed to defer the leak rate testing until the next scheduled refueling outage. The shutdown cooling system is the only normal means of removing decay heat from the reactor vessel during short outages, such as the upcoming October 1989, surveillance outage. The valves have been tested four times since May 1987. Only one failure occurred in MO-1001-50. As a result, the valve was refurbished and has successfully passed three subsequent LLRTs.

The schedule extension for the RBCCW system isolation valves is needed because the testing would impact components cooled by the RBCCW system during the upcoming short outage. The RBCCW system is a closed-water system and does not provide a direct leakage flow path from the drywell to the secondary containment. In addition, staging to provide access must be built and removed resulting in considerable exposure of workers to radiation. The water in the system is also required to be drained and treated which will result in an increase in the production of radioactive waste. The previous LLRTs performed on these valves, which include three since 1987, have demonstrated minimal leakage, similar to that discussed above, related to the drywell head and access hatch.

In relation to the shutdown cooling suction isolation valves and the RBCCW valves, the staff concludes based on the

accelerated LLRTs, the previous test history, the required system functions that would be needed during the upcoming October outage, added worker exposure, increased production of radioactive waste, and the short interval of the extension, that the requested one-time schedule extension of six months is acceptable.

The staff's Safety Evaluation dated September 27, 1989, provides additional details and bases supporting the requested exemptions.

IV.

As discussed above, the underlying purpose of the requirements of Section III.A.6(b) of Appendix J to 10 CFR part 50 is to ensure the integrity of the primary containment and its penetrations. The underlying purpose is achieved and served by the licensee's Corrective Action Plan, Valve Betterment Program and recent good test results of the LLRTs. Thus, an equivalent level of protection is provided.

Therefore, the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR Part 50.12(a)(2)(ii).

Also as discussed above, the underlying purpose of the requirements of III.D.2(a) and III.D.3 of Appendix J to 10 CFR part 50 are to detect local leaks and measure leakage across primary reactor penetrations and containment isolation valves at intervals of no greater than two years. The licensee has made a good faith effort to comply with the regulations by performing an increased number of LLRTs on containment penetrations and valves, including the ones discussed above. In addition, the previous test history, corrective actions, and need for the Shutdown Cooling System and RBCCW system during the October outage, support the requested one-time schedule extension of six months. Thus, the exemption which is only to provide temporary relief, and in that the licensee has made a good faith effort to comply with the regulations; thus, again an equivalent level of protection is provided.

Therefore, the Commission's staff finds that there are special circumstances, in these instances, which satisfy the standards of 10 CFR Part 50.12(a)(2)(v).

V.

Based upon the above evaluation, the staff considers the licensee's alternate test schedule to be equivalent to that achieved by conformance to Appendix J

to 10 CFR part 50. Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii) are present, justifying the exemption; namely, that application of the regulation in this particular circumstance is not necessary to achieve the purpose of the rule.

Accordingly, the Commission hereby grants an exemption to Section III.A.6(b) of Appendix J to 10 CFR part 50 to allow the licensee to perform the next Type A test during RPO-8 and to resume the Type A retest schedule of Section III.D.1(a) for the PNPS. This exemption does not apply if the next Type A test is deemed a failure based on the NRC acceptance criteria. Such a failure would require the licensee to comply with the retest schedule of Section III.A.6(b) until two consecutive Type A tests meet the NRC acceptance criteria.

The Commission has further determined that the special circumstances, as set forth in 10 CFR 50.12(a)(2)(v) are present, justifying the one-time schedule extension of approximately six months, in that the licensee has made a good faith effort to comply with the regulations.

Accordingly, the Commission hereby grants a one-time exemption to the schedule requirements of III.D.2(a) and III.D.3 for the required Type B and C LLRTs as follows:

III.D.2.(a) (Type B Tests)—Drywell

Head, Drywell Head Access Hatch

III.D.3 (Type C Tests)—Isolation Valve

MO-1001-47, Isolation Valve MO-1001-50, Isolation Valve MO-4002, Check Valve 30-CK-432

The LLRTs on the penetrations and valves identified above will be performed during RPO-8.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (54 FR 39236).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of September, 1989.

For the Nuclear Regulatory Commission,
Steven A. Varga,

Director, Division of Reactor Projects-I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 89-23400 Filed 10-3-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-29634; License No. 47-24878-01; EA 89-171]

Ultrasonic Specialists, Inc., Scott Depot, WV; Confirmatory Order Suspending License

I

Ultrasonic Specialists, Incorporated (USI or licensee), currently holds NRC License No. 47-24878-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on December 18, 1986, pursuant to 10 CFR parts 30 and 34. The license is due to expire on December 31, 1991. The license authorizes USI to possess sealed sources, containing a maximum of 100 curies per source of iridium-192 and 100 curies per source of cobalt-60, at temporary job sites and the company's location in Scott Depot, West Virginia, for use in industrial radiography operations.

II

In November 1987, the licensee's Radiation Protection Officer (RPO) terminated employment with USI. The NRC, Region II, performed a routine, unannounced inspection of USI on September 28, 1988. The inspection identified a failure of the licensee to notify the NRC of the RPO's termination since November 1987. The NRC, Region II, issued a Notice of Violation (NOV) on October 17, 1988. The licensee responded to the NOV in a letter dated November 18, 1988, signed by Mr. Terry E. Blake, President of USI, admitting the violation. In its response to the violation, the licensee submitted a license amendment request to remove the terminated RPO's name from the license and to name Mr. Blake as the RPO. The licensee also provided a copy of Mr. Blake's resume.

In response to allegations received by the NRC Region II office, an investigation by the NRC Office of Investigations was initiated in April, 1989. This investigation is still in progress. By letter dated September 14, 1989, Mr. Blake requested that the license issued to USI be terminated. He also stated that he was in the process of negotiating the sale of his sources and that he had placed the sources in secured storage and completely halted the radiography business.

III

Based upon the licensee's desire to terminate its license, I have determined that the public health, safety and interest require that License No. 47-

24878-01 be suspended. Furthermore, pursuant to 10 CFR 2.704, I found that the public health, safety, and interest require that the order be immediately effective.

IV

Accordingly, in view of the foregoing, and pursuant to sections 81, 161b, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and part 30, *It is hereby ordered, effective immediately, That:*

A. NRC Materials License No. 47-24878-01 is suspended, except as provided in section IV.B. The licensee shall not receive any licensed material.

B. All licensed material in USI's possession shall remain in safe secured storage until transferred to an authorized recipient in accordance with 10 CFR 30.41. Such transfer should be completed within 60 days of the date of this Order.

C. Within 10 days after the actual transfer of the licensed material, the licensee shall certify in writing, under oath or affirmation, that all licensed material has been transferred to an authorized recipient and that no licensed material is still in its possession. That certification shall be accompanied by a completed NRC Form 314 and shall be addressed to the Regional Administrator, USNRC Region II, 101 Marietta Street NW., Suite 2900, Atlanta, Georgia 30323.

The Regional Administrator, Region II may, in writing, relax or rescind any of the above provisions on demonstration of good cause by the licensee.

V

Any person other than the licensee adversely affected by this Order may request a hearing within 20 days of this Order. Any request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, at the same address, and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II, Suite 2900, 101 Marietta Street, Atlanta, Georgia 30323.

If any such person requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). An answer to this order or a request for

hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Dated at Rockville, Maryland, this 20th day of September 1989.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 89-23401 Filed 10-3-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Publication of Commercial Activities Inventories

AGENCY: Office of Management and Budget.

ACTION: Publication of commercial activities inventories.

SUMMARY: This Notice contains the initial inventory of commercial activities provided by the Department of Energy. Executive Order 12615, "Performance of Commercial Activities," dated November 19, 1987, requires OMB to publish for public review department inventories of commercial activities. The initial submission is attached and includes the number of positions and the projected year of study. Additions to this inventory will be forthcoming.

Interested parties are invited to nominate, in writing to the Privatization Official listed below, with a copy to OMB, additional activities for inclusion on the inventory and for eventual study. There is no time limit for these nominations.

The Privatization Official is as follows: Donna Fitzpatrick, Department of Energy, 1000 Independence Ave., SW., Room 7A145, Washington, DC 20585.

Specific questions relating to the A-76 inventory should be referred to the following individual:

Richard Moore, Department of Energy, Forrestal Building, 1000 Independence Ave., SW., Room 4B194, Washington, DC 20585.

Linda Mesaros, Office of Management and Budget, Office of Federal Procurement Policy, 725 17th Street,

NW., Room 9013, NEOB, Washington, DC 20503.

Frank Hodsoll,

Executive Associate Director.

A-76 INVENTORY

Unit	Geographic location	Commercial activity	FTE	
AOO.....	Albuquerque, NM.	Guard Services.	12	89
ASDP.....	German-town, MD.	Security Clearance.	10	89
ASMA.....	Washington, DC	Processing Central Mail	16	89
ASMA.....	German-town, MD.	Services.	122	92
ASMA.....	German-town, MD.	Utility/General Maintenance.	20	91
ASMA.....	German-town, MD.	Payroll Operations.	14	89
BPA.....	Portland, OR.	Mapping Services.	16	89
BPA.....	Portland, OR.	Aircraft Services.	14	91
BPA.....	Portland, OR.	Mail Services...	42	92
BPA.....	Portland, OR.	Heavy Mobile Equipment Maintenance.	46	93
BPA.....	Portland, OR.	Material Handling/Warehouse.	19	94
BPA.....	Portland, OR.	Graphic & Photo.	12	94
BPA.....	Portland, OR.	Supply Services.	11	94
BPA.....	Portland, OR.	Library Services.	65	95
BPA.....	Portland, OR.	Maintenance Shop Services.	186	95
BPA.....	Portland, OR.	ADP/Computer Services.	45	91
IOO.....	Idaho Falls, ID.	Fire Protection Services.	02	89
WPA.....	Golden, CO.	Fixed-Wing Aircraft.	08	89
WPA.....	Golden, CO.	Rotary Wing Aircraft.		
Total			660	

Unit:
AOO—Albuquerque Operations Office.
ASDP—Assistant Secretary Defense Programs.
ASMA—Assistant Secretary Mgmt & Admin.
BPA—Bonneville Power Administration.
IOO—Idaho Operations Office.
WPA—Western Area Power Administration.

[FR Doc. 89-23344 Filed 10-3-89; 8:45 am]

BILLING CODE 3110-01-M

PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS

The Presidential Commission on Catastrophic Nuclear Accidents, pursuant to its authority under subsection 170 (1), of Public Law 100-408, the Price-Anderson Act of 1988, will hold a meeting on October 25, 1989, from

10:00 a.m.-5:00 p.m. and on October 26, 1989, from 9:00 a.m.-5:00 p.m., at the Bellevue Hotel, 15 E Street, NW., Washington, DC 20001. The Commission was created to conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident and to submit a final report to Congress not later than August 20, 1990.

At this meeting, Dr. Richard Wilson of the Energy and Environmental Policy Center at Harvard University, and Professor Marvin Goldman of the Department of Radiological Sciences at University of California-Davis will speak on the nuclear accident at Chernobyl and its effects. In addition, Dennis Kwiatkowski, Assistant Associate Director of the office of Natural and Technological Hazards from the Federal Emergency Management Agency will speak on the various funds for and methods of responding to natural and man-made disasters in the United States. Marianna Smith, Executive Director of the Mansville Personal Injury Settlement Trust will speak on protecting the integrity of the tort system while developing means to fully compensate victims. Professor Paul Wyler of Harvard Law School and his colleagues will speak on recent studies in personal injury tort reform. William Magavern, Staff Attorney, of the U.S. Public Interest Research Group will also address the Commission.

The Commission will also discuss its anticipated activities and plans for future meetings, and will organize itself for the research and preparation of its report to Congress.

The public is permitted to attend this meeting, and there will be time during the sessions for brief statements. Transcripts of the meeting will be available at the Commission office, 600 E Street, NW., Room 660.

For further information, contact Jerome Saltzman at 600 E Street, NW., Room 660, Washington, DC 20004, (202)272-5695. Members of the public planning to attend the Commission meeting should contact Mr. Saltzman at (202)272-5695 before the close of business, October 23, 1989.

Dated: September 29, 1989.

Jerome Saltzman,

Executive Director, Presidential Commission on Catastrophic Nuclear Accidents.

[FR Doc. 89-23371 Filed 10-3-89; 8:45 am]

BILLING CODE 6820-SP-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition: Barr

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Mr. W.A. Barr submitted a petition dated June 29, 1989, requesting the agency to commence a proceeding to determine whether to issue an order requiring the recall and remedy of certain motor vehicles which are claimed to contain a safety-related defect. The petition describes the alleged defect as a susceptibility of the automatic transmission to fail to engage or hold in the "Park" position after the driver believes he or she has shifted into Park and left the vehicle; it refers to the "illusion" of having engaged the transmission in the Park position.

NHTSA previously conducted a formal investigation of whether certain automatic transmissions installed in vehicles manufactured by the Ford Motor Company between 1970 and 1979 contained alleged safety-related defects similar to those alleged defects which are of concern to Mr. Barr. That investigation was closed in 1981, as a result of a settlement agreement between the agency and Ford, in which Ford notified owners of the affected vehicles of NHTSA's initial determination that the vehicles contained a safety-related defect, and supplied those owners with dashboard warning labels that were intended to provide permanent reminders to operators of appropriate measures for securing their parked vehicles from unintended movement. That settlement was upheld by the United States Court of Appeals for the District of Columbia Circuit in *Center for Auto Safety v. Lewis*, 685 F.2d 656 (1982).

Since closing that investigation, in monitoring the settlement agreement, the agency has maintained a public file which includes information concerning unintended vehicle movement in vehicles manufactured by Ford and other motor vehicle manufacturers. In addition, the agency has considered various petitions, submitted by Mr. Barr, the Center for Auto Safety (CFAS), and others, requesting that the agency reopen the investigation. Because no substantive information was submitted to change the agency's view of the

adequacy of the settlement, all of the previous petitions have been denied.

The petitioner, who is familiar with the agency's prior actions and expressed views on this subject, now requests that the issues be subjected to a new investigative examination of broader scope. This petition observes that vehicles produced by manufacturers other than Ford have also been involved in similar incidents of inadvertent movement while unattended. In fact, the petition notes that accidents of this nature involving Ford vehicles, as recorded in the agency's Fatal Accident Reporting System, are approximately equal to Ford's share of the automotive market " * * * because of the functional similarity of all automatic transmissions." The present petition, therefore, requests that the agency investigate, through studies and surveys, the claim that such accidents are evidence of a safety defect common to vehicles produced by all automotive manufacturers, and that an order be issued for recall and remedy on an industry-wide basis.

In 1985, while considering a CFAS petition to reopen the Ford transmission investigation, NHTSA conducted a detailed peer group analysis in order to evaluate the inadvertent park-to-reverse experience of Ford vehicles as compared to those produced by General Motors Corporation, Chrysler Corporation, and American Motors. The agency concluded that such incidents occurred among vehicles produced by all manufacturers, and that the evidence suggested that driver behavior contributed to many of the reported incidents. The agency also noted that the overall trend of such incidents was decreasing, and that the degree of difference between incidents involving Ford vehicles and those built by other manufacturers was smaller than in 1980. Mr. Barr's present petition, filed almost four years after the peer analysis, supports the agency's earlier findings by claiming that the alleged safety problem is not unique to Ford vehicles; rather, it has been experienced on an industry-wide basis.

This petition presents a lengthy discussion of a set of specific procedures that Mr. Barr proposes for the investigation requested. It also offers projections and speculations as to the results of the surveys and studies proposed. Based on the projected results of the requested efforts, the petition also proposes remedies and suggests specific actions available to the agency, ranging from public notices to regulation of design features. The petition does not, however, offer new substantive

information beyond that which the agency has previously considered and found to be insufficient to warrant reopening the earlier investigation.

Also, the breadth of the relief petitioner requests increases the uncertainty of the agency's succeeding in any necessary enforcement litigation. In upholding the agency's decision to settle and close its Ford transmission investigation, the court observed that "[NHTSA] would have faced great difficulties in sustaining its burden to prove the existence of a defect * * *". *CFAS v. Lewis*, *supra*, 685 F.2d at 663. These difficulties would undoubtedly be multiplied if the agency became involved in industry-wide litigation on this issue. For these reasons, there is no reasonable possibility that the recall order requested in the petition would be issued at the conclusion of an investigation.

The agency's Rulemaking Office is already considering another petition filed by Mr. Barr, which also addresses inadvertent shifting out of park. Also, on April 5, 1988, our Rulemaking Office issued a Notice of Proposed Rulemaking on inadvertent steering column lockup which addresses some of Mr. Barr's concerns. It would not be appropriate for both the Enforcement Office and the Rulemaking Office simultaneously to devote scarce agency resources to this issue.

Accordingly, it is our judgment that further allocation of our limited investigative resources to undertake a further, expanded examination of this alleged defect is not warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 89-23426 Filed 10-3-89; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping

requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that an Agency has made such a submission. USIA is requesting approval for a three-year extension of its information collection on a standardized program report.

DATE: On or before November 30, 1989.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202)

485-7503; and OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average thirty minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503.

Title: Foreign Data.

Form Number: IAP-10.

Abstract: The form is intended to supplement other security investigation forms used in processing security clearances for prospective employees. It is used for the purpose of allowing investigators to contact people in the United States who have knowledge of a candidate's overseas residence and/or employment. By making contacts domestically, USIA can save both time and money that might otherwise be needed in conducting an overseas investigation.

Proposed frequency of responses: No. of Respondents—200, Recordkeeping Hours—0, Total Annual Burden—100.

Dated: September 28, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89-23370 Filed 10-3-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 191

Wednesday, October 4, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 39075, Friday, September 22, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Monday, October 2, 1989.

CHANGE IN THE MEETING:

Open Session

The items listed below have been deleted from the agenda:

- Proposed Final Procedural Rule, 29 C.F.R. Section 1613.215(a)(7)—Federal Sector Cancellation of Complaints for Failure to Accept Full Relief.
- Proposed Revision to Equal Employment Opportunity—Management Directive 107 (EEO-MD 107), Federal Sector Complaint Processing Manual.

CONTACT PERSON FOR MORE

INFORMATION: Frances M. Hart, Executive Officer, Executive Secretariat (202) 663-7100.

Dated: October 2, 1989.

This Notice Issued October 2, 1989.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 89-23615 Filed 10-2-89; 1:20 pm]

BILLING CODE 6750-06-M

FEDERAL ENERGY REGULATORY COMMISSION

Meeting

September 28, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

DATE AND TIME: October 5, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Docket No. RM87-34-000, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol. Final Rule.

CONTACT PERSON FOR MORE

INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23498 Filed 10-2-89; 9:04 am]

BILLING CODE 6717-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Meeting

September 28, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

DATE AND TIME: October 5, 1989, 9:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket Nos. IN89-2-000, CP89-304-000, and CP89-305-000, Northwest Pipeline Corporation.

CONTACT PERSON FOR MORE

INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23497 Filed 10-2-89; 9:04 am]

BILLING CODE 6717-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER 89-23077.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 5, 1989 10:00 a.m.

MEETING OPEN TO THE PUBLIC:

The following matter has been added to the above meeting:

Protest from Americans for Robertson, Inc., RE: Procedures for Matching Fund Resubmissions.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-23587 Filed 10-2-89; 12:05 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, October 10, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary action) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23646 Filed 10-2-89; 4:02 pm]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Wednesday, October 11, 1989.

PLACE: Board Room, Eight Floor, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: The first three items are open to the public. The last three are closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Safety Study: Passenger Vessels Operating from U.S. Ports.
2. Safety Study: Crashworthiness of Small Poststandard School Buses. (Calendared by Member Burnett.)
3. Reconsideration of Problem Cause: Midair Collision of SkyWest Airlines Metro II and Mooney M20, Kearns, Utah, January 15, 1987.
4. Opinion and Order: Administrator v. Janka and Newman, Dockets SE-8144 and SE-8159; disposition of the Administrator's appeal. (Calendared by Member Nall.)
5. Opinion and Order: Administrator v. Godwin, Docket SE-8397; disposition of respondent's appeal. (Calendared by Member Burnett.)
6. Opinion and Order: Administrator v. Trail Lake Flying Service, Dockets SE-8578; disposition of respondent's appeal. (Calendared by Member Burnett and Nall.)

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 383-6525.

Dated: September 29, 1989.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 89-23536 Filed 10-2-89; 9:05 am]

BILLING CODE 7533-01-M

RESOLUTION TRUST CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:50 a.m. on Friday, September 29, 1989, the Board of Directors of the Resolution Trust Corporation met in

closed session, by telephone conference call, to consider certain matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters

in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(9)(B)).

Dated: September 29, 1989.

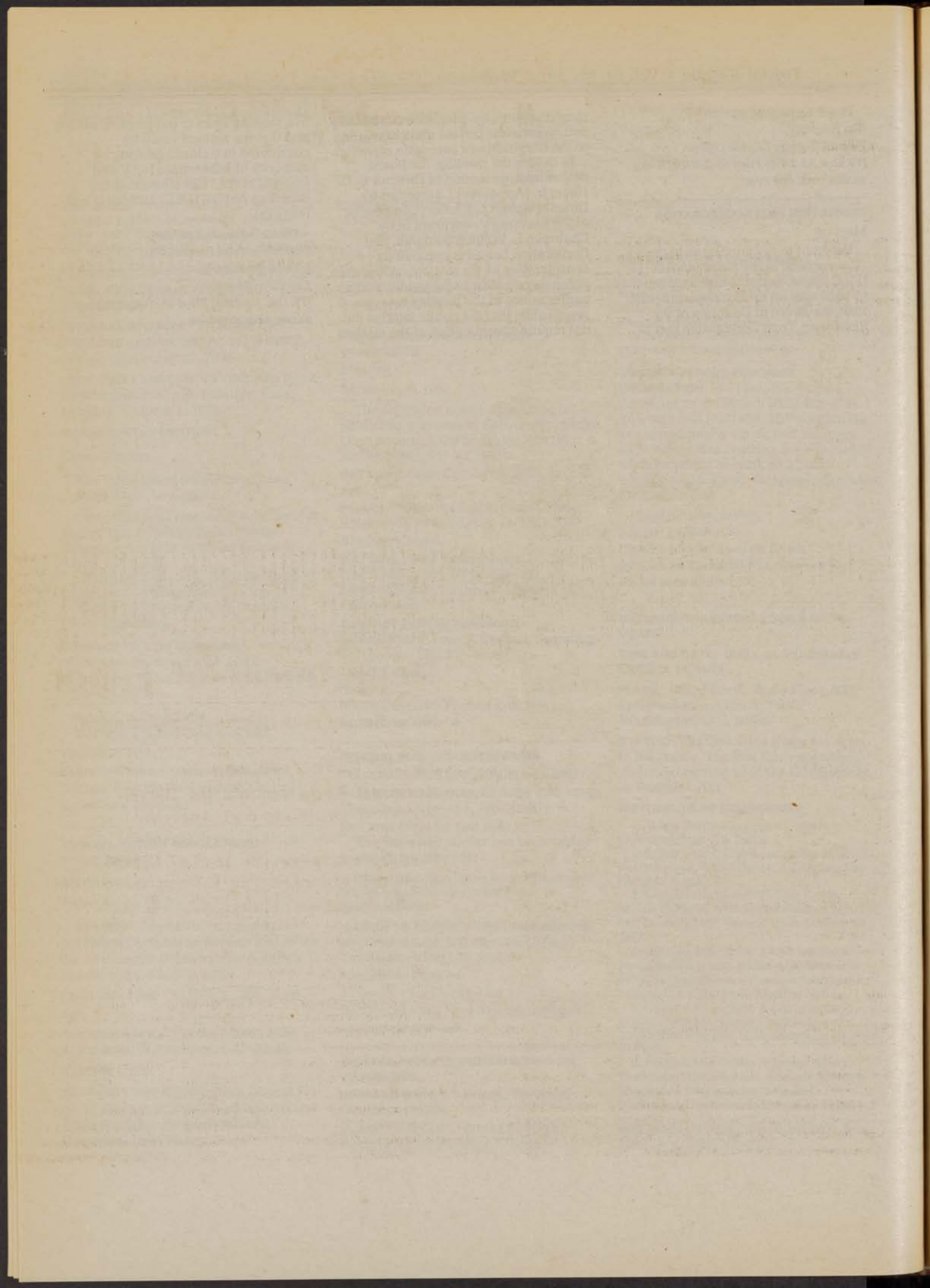
Resolution Trust Corporation.

John M. Buckely, Jr.,

Executive Secretary.

[FR Doc. 89-23631 Filed 10-2-89; 8:45 am]

BILLING CODE 6714-01-M



Federal Register

Wednesday
October 4, 1989

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7, 70, and 75

Approval Requirements for Diesel-Powered Machines and Approval, Exposure Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines; Proposed Rules

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7, 70, and 75

RIN 1219-AA27

Approval, Exposure Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: These proposed rules would establish new requirements for the approval of diesel engines and other related equipment used in underground coal mines, establish exposure monitoring and reporting requirements for air sampling of gaseous diesel emissions by coal mine operators, and provide safety standards for the use of diesel-powered equipment in underground coal mines. The proposals are, in part, derived from existing regulations in 30 CFR parts 18, 31, 32, 36, and 75 and are intended to provide protection against explosion, fire and other safety and health hazards related to the use of diesel-powered equipment. The proposed rules would also seek to amend certain equipment safety standards in existing part 75 that are now applicable only to electric-powered equipment so that such standards would apply, where necessary, to diesel-powered equipment as well. The new standards would be consistent with advances in mining technology, address known hazards not now covered by standards and provide reduced paperwork requirements where possible.

DATE: Written comments must be submitted on or before January 2, 1990.

ADDRESS: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the "Report of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines" may be obtained from the same office.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, telephone (703) 235-1910.

SUPPLEMENTARY INFORMATION: I. Summary and Rulemaking Background

The Mine Safety and Health Administration is proposing to regulate the approval and use of diesel-powered equipment in underground coal mines, and establish related health monitoring provisions. These proposals are made under the authority of sections 101 and 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811 and 957. This proposal is based on the final report of the Mine Safety and Health Administration (MSHA) Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines (Committee).

On October 6, 1987, MSHA published a Notice of Establishment of the Advisory Committee in the *Federal Register* (52 FR 37381). The notice announced the Secretary of Labor's (Secretary) finding that it was in the public interest to establish the Committee to review standards and regulations related to the approval and use of diesel-powered equipment in underground coal mines, and that the Secretary was considering the promulgation of standards and regulations for diesel-powered equipment. The Committee Charter was subsequently filed in compliance with the provisions of the Federal Advisory Committee Act and section 102(c) of the Mine Act. Nine Committee members were appointed by the Secretary, and notice of their appointment was published in the *Federal Register* on January 5, 1988 (53 FR 189). As required by the Mine Act, the majority of members had no economic interests in the coal or other mining industry, and were not operators, miners, or officers or employees of the Federal Government or any state or local government. Two of the Committee members represented the interests of the industry, and two of the Committee members represented the interests of labor.

The nine Committee members provided a broad range of expertise in the areas of health, mine safety, and engineering. Two Committee members were medical doctors. One physician had experience in studying and treating pulmonary occupational diseases, and the other was a former public health officer as well as a private practitioner. Another Committee member was a certified industrial hygienist with a doctoral degree in public health, and extensive experience studying and working for the occupational health needs of miners. One Committee member was a scientific researcher who conducted studies to show the effects of

diesel exhaust on laboratory animals. The Committee also included a retired engineer who designed mining equipment for a large mining equipment manufacturing company and an engineer and college professor who had researched the mechanics of diesel-powered engines in the underground mine environment. Also present as a Committee member was a health and safety specialist who had investigated health and safety related problems at mines. A mine operator with extensive experience operating a mine using diesel-powered equipment was appointed to the Committee. The Chairman of the Committee had served as the Deputy Director of the Bureau of Mines and also had years of management experience in several mining companies. The areas of expertise represented by the Committee members provided a body of experience and knowledge covering all mining topics which aided the group in reaching its conclusions and recommendations about diesel-powered equipment. Under the Mine Act, the Committee was chartered for a 6-month term. The Committee mandate was to provide recommendations on three broad issue areas concerning equipment approval, safe use, and protection of miners' health.

On January 4, 1988, a notice in the *Federal Register* (53 FR 87) announced the date of the first Committee meeting, and responded to comments received from interested parties on the establishment of the Committee.

The Advisory Committee held six meetings over a six-month period. Two supplemental visits were made to underground coal mines where diesel equipment was in use. Each Committee member visited at least one of the coal mines. By visiting the coal mines, each member was able to see diesel-powered equipment in operation. They observed the methods used to service and maintain the equipment, provide for fuel storage, and otherwise provide health and safety protections for the miners at work underground.

Several panel presentations of health and safety experts were given at meetings in order to help provide information and data for the Committee to consider in reaching its recommendations. At the third meeting of the Committee, a panel of health experts presented the most recent studies concerning the possible carcinogenic effect of diesel exhaust exposure. The panel of experts also attempted to address how the information which was presented could be integrated in order to reach an

objective estimation of the human risks to exposure. As a result of the health panel presentations and in order to adequately address the health issues presented, the Committee Chairman appointed a four-member Health Subcommittee. The Subcommittee met several times in order to reach a conclusion on the recommendation concerning diesel particulate. The fourth meeting of the Committee included a panel of experts who provided information and data to the Committee concerning the use of fire suppression systems as an alternative approach for addressing the potential fire hazard of diesel-powered equipment for use in areas where permissible electric equipment is not required. At the Committee's fifth meeting, a panel of 13 miners who worked with diesel-powered equipment in underground coal mines presented their experiences and concerns with the use of diesel-powered equipment including health effects, equipment hazards, and training and maintenance needs.

MSHA provided the Committee with a set of draft regulations covering the approval of diesel engines and power packages, safety and use practices, and exposure monitoring. The Committee reviewed the information as a first step in developing its recommendations. Several Committee members also provided for consideration draft regulations for the safe use of diesel-powered equipment and for exposure monitoring of gaseous diesel emissions. Initial presentations were conducted for the Committee by MSHA, the National Institute for Occupational Safety and Health (NIOSH) and the Bureau of Mines (BOM). The Committee received an overview of MSHA's Interagency Task Force Report entitled, "The Health and Safety Implications of the Use of Diesel-Powered Equipment in Underground Coal Mines."

During its deliberations, the Committee addressed three broad areas of concern: approval issues—issues concerning equipment design and performance; use issues—issues concerning the safe use of diesel equipment in the underground coal mine environment; and health issues—issues concerning the evaluation and control of health hazards associated with diesel equipment. These areas are generally regulated by 30 CFR parts 7, 70, and 75. The Committee recognized potential hazards in a number of areas including safety hazards not present with electric equipment traditionally used in coal mines, fire hazards attendant with the use of diesel-powered equipment, hazards involved in the handling of fuel

underground, and the acute and long-term effects of diesel exhaust on the health of the miners. Based on the information which it examined, the Committee concurred that regulations should be promulgated by MSHA to govern the approval and use of diesel-powered equipment in underground coal mines and recommended that a number of specific areas be addressed. The Committee recommendations serve as the basis for this proposal. The Committee, as part of its transmittal letter transferring the Report to the Secretary, stated that, "[t]he actions which we suggest reflect our best judgment on how to ensure the safety and health of our nation's coal miners. We believe that the recommendations contained in [the] report are worthy of serious and immediate attention by the Department [of Labor]." The Committee's final report should be read in conjunction with the discussion of this proposed rule. Copies are available upon request from MSHA's Office of Standards, Regulations, and Variances at the address listed above.

II. Discussion of Proposed Rules

A. 30 CFR Part 7 General Discussion

Approval requirements for diesel-powered equipment used in underground coal mines are necessary to protect against mine fires and explosions, the risks of which are greater in coal mines due, in part, to the presence of potentially explosive concentrations of methane and combustible dust. In underground coal mines, methane combined with sparks which may be present from the internal combustion process, accumulation of combustible fuel, oil, and excessive heat on engine and power package surfaces, all contribute to the increased risk. Further, diesel exhaust may contribute to miners' exposure to harmful gases. Accordingly, MSHA is proposing to establish requirements for testing and approval of diesel-powered equipment in underground coal mines.

Under the Mine Act, MSHA is required to approve certain products for use in underground mines. This approval indicates that these products have met MSHA's specifications and test requirements, and have been designed and manufactured to ensure that the products will not present a fire, explosion, or other safety hazard related to use.

The Committee was presented with an overview of the approval process. Historically, MSHA and its predecessor agencies have approved equipment intended for use in areas of mines where methane and combustible dusts might

provide possible sources of explosion or fire. During the approval process, equipment is evaluated against a set of published technical requirements. Conformance with design requirements is established by a detailed comparison of the design requirement against the finished product and the drawings provided by the manufacturers. Compliance with performance aspects of these requirements is determined by testing the product and comparing the test results against established criteria. If the product complies with the design and technical performance requirements, an MSHA approval is issued which is valid as long as that product is built in accordance with the drawings and specifications. The Agency has established programs through which the manufacturer or purchaser can modify approved equipment after appropriate technical evaluation by MSHA.

Diesel-powered equipment was first introduced in the United States into underground coal mines in 1946 but did not attain significant use until the 1970's. In 1989, there were over 1500 diesel-powered units in use in over 120 coal mines across the United States. Because of the growth in use of these machines, MSHA believes that regulations are necessary in order to protect the safety and health of the nation's coal miners. Currently, MSHA under the authority of 30 CFR part 36, approves diesel-powered equipment for use in gassy non-coal mines under regulations requiring that certain technical requirements are met. In underground coal mines, mine ventilation plans specify the use of diesel-powered equipment approved as permissible under part 36 in areas of the mine where permissible electric equipment is required. Thus, diesel-powered equipment for underground coal mines is generally approved under part 36. However, part 36 was originally developed for gassy non-coal mines and does not address a number of more recent technical improvements in diesel technology. MSHA is seeking comments from interested parties on the continued use of parts 31, 32, and 36 in underground coal mines, and the continued applicability of these parts to metal and nonmetal mines in light of the newly proposed requirements for diesel engines and diesel power packages which are contained in this document. MSHA could revoke or revise parts 31, 32, or 36 and seeks information from all parts of the mining industry on how to best handle those approval requirements. This proposal provides new subparts for the testing and approval of diesel engines and power

packages in underground coal mines. The Agency intends that, once these subparts would be published as a final rule, the use of part 36 equipment would be permitted according to the provisions of proposed 30 CFR 75.1907. Part 36 could remain in effect for metal-nonmetal mines; however, MSHA specifically seeks comments from interested parties on the continued application of the part 36 approval regulations to metal-nonmetal mines and specifically requests comments on whether part 36 should be revised or revoked and replaced in light of the new proposed approval regulations for diesel-powered equipment in underground coal mines.

In preparation for the Advisory Committee, MSHA reviewed existing approval requirements for diesel-powered equipment and provided four draft documents to serve as the basis for Advisory Committee discussions on the approval issues. These documents included draft approval requirements developed under part 7 for diesel engines and diesel power packages intended for use in areas of coal mines, depending upon the hazard likely to be present in the coal mine.

For the proposed approval regulation, subpart E, category A engine requirements and subpart F power package requirements are applied to products intended for use in an underground mine environment where methane may be encountered and where combustible materials are present. Subpart E engine and subpart G power package approval requirements are applied to products for use in areas of the mine where no methane is expected to be present but where combustible materials are present. Separate approval requirements were established for the engine since features affecting health and safety are controlled by the engine manufacturer. Certain other safety features such as flame arresters, spark arresters, and water scrubbers must be added to the engine to ensure that it can be operated safely in the coal mine environment. An engine in combination with these safety features is termed a diesel power package. A proposal for a separate approval was developed for the power package because the power package manufacturer is normally a company other than the engine manufacturer and controls the assembly of the power package. Approved diesel power packages can be incorporated by equipment manufacturers into a wide variety of machines without the need for further MSHA evaluation of power package features. MSHA therefore intends that two approvals would be

necessary: one for the engine and one for the power package.

At the time of the Committee's work, MSHA had not yet drafted proposals for the evaluation of the completely assembled unit of diesel-powered equipment incorporating an approved power package. The MSHA drafts which were initially provided to the Committee only specified the engine and power package requirements. Committee discussions also raised the issue of the scope of additional features which could be included in the approval requirements for the completely assembled unit of equipment. The Committee recommended that an approval program be established which would emphasize other equipment safety features which could be readily addressed by an equipment manufacturer. These features could include the incorporation of a fuel system, exhaust gas dilution system, fire suppression system, and appropriate electric and braking systems, and would address the interrelationship of all these systems and would provide some safety advantages. For example, the location of the fuel system might be important in relation to the surface temperature encountered on a diesel power package.

In order to carry out the Committee recommendation, MSHA has published an advance notice for proposed rulemaking (ANPRM) elsewhere in today's Federal Register. MSHA has not sought to propose approval requirements at this time because the Agency is seeking further guidance on certain issues from the mining community.

It should be noted that the ANPRM has referred to the approval requirements for diesel machines as subparts H and I to part 7. Subpart H would provide an approval evaluation for diesel machines used where permissible electric equipment is required, and subpart I would provide an approval evaluation for diesel machines used where permissible electric equipment is not required. In attempting to provide notice to the public about the interaction between the proposed approval evaluation and the dates by which products would be required to be evaluated under proposed § 75.1907, the Agency has referred to the ANPRM part 7 subparts H and I in the proposed rule published in today's Federal Register. The use of those subparts is meant as guidance to the public on MSHA's intended application of those subparts and the time schedule for their implementation on diesel-powered machinery used in underground coal mines.

The Committee endorsed the concept that approved diesel equipment be required in all areas of the mine where permissible electric equipment is required. This endorsement was based on the MSHA draft approval regulations provided to the Committee which essentially follow existing part 36 approval requirements to protect equipment from potentially explosive concentrations of methane gas and combustible quantities of coal dust. Thus, subpart E, category A engines and subpart F of the proposal, dealing with diesel engines and power packages respectively, were designed to apply to products intended for use in an underground mine environment where methane may be encountered and where combustible materials are present. Conversely, the Committee recommended that permissible diesel-powered equipment should not be required in outby areas where non-permissible electric equipment is allowed. This delineation of where to require certain types of explosion-proof diesel-powered equipment is based largely on the regulatory structure currently used by MSHA for electric equipment, and the fact that current safety standards enforced by MSHA are designed to keep intake airways free of methane. Therefore, equipment used in these outby areas would not be exposed to explosive concentrations of methane and would not need to have explosion protection features.

The need to approve diesel-powered equipment, except for the limited class which is addressed below, for use in outby areas is a concept which the Committee directly recommended based on the MSHA draft regulation originally submitted to the Committee. MSHA is proposing approval programs for outby diesel-powered equipment. Subpart E, category B engines and subpart G power packages are designed to apply to engines and power packages for use in areas of the mine where no methane is expected to be present, but combustible materials are present. MSHA specifically solicits comments on whether outby diesel-powered equipment should be approved.

The proposals for the diesel engine and power package and the advance notice of proposed rulemaking (ANPRM) for the machine approval have been included under part 7. In establishing the part 7 concept, MSHA anticipated proposing additional subparts for products that have characteristics suitable for applicant or third party testing because the tests can be objectively run in a routine and readily reproducible manner, without any

elements of subjective analysis. Products whose testing and evaluation depend upon the experience, judgment and knowledge of Agency personnel would not be candidates for part 7 subparts. In light of these factors, MSHA solicits comments on the suitability of diesel engines, power packages and machine approvals under part 7. An alternative could be development of approval requirements calling for MSHA testing and evaluation based on applicant submissions of product samples and technical data or a program combining features of part 7 and other approval programs.

A major recommendation made by the Committee was to establish a category of "limited class" outby equipment which, instead of surface temperature controls, would have fire prevention features such as special fuel system protection, fire suppression systems and an engine compartment air temperature sensor with the capability to shut down the engine. They also recommended this be accomplished without a formal part 7 approval program. This recommendation is addressed more completely under part 75.

1. Topic-by-Topic Discussion of 30 CFR part 7 subpart E

Section 7.81 Purpose and Effective Date. Proposed subpart E would establish specific requirements for approval of all diesel engines intended for use in underground coal mines. That is, this subpart would establish engine performance and exhaust emission requirements for approval of diesel engines in areas of underground coal mines where permissible electric equipment is required, and where nonpermissible electric equipment is allowed. An effective date would also be set for implementation of the regulation.

Section 7.82 Definitions. Section 7.82 would set out the definitions which apply in subpart E. The definitions are specific to this subpart. They are designed to clarify the requirements of subpart E and apply to approvals for diesel engines in areas of mines where permissible electric equipment is required and where nonpermissible electric equipment is allowed. Category A engines would be defined as engines intended for use in areas of underground coal mines where permissible electric equipment is required. Category B engines would be defined as engines intended for use in areas of underground coal mines where nonpermissible electric equipment is permitted.

Section 7.83 Application Requirements. Under the proposed rule, an application for approval of a subpart

E diesel engine would contain sufficient information to demonstrate compliance with the technical requirements of this subpart. The application would be accompanied by a general arrangement drawing, detail drawings of emission related parts, and a drawing list that would identify the drawings which are to be included as part of the approval process. A statement would also be required which specifies whether the approval application is for a category A engine or a category B engine.

This section of the proposed rule would allow applicants to submit composite drawings in lieu of individual drawings. The use of composite drawings would allow manufacturers flexibility in their drawing system. The proposed rule would also provide for the submission of certain information which would become part of the approval documentation after approval testing has been completed.

Some information on the diesel engine cannot be determined prior to performing the approval tests. The information would include the ventilation rate, particulate index, and the fuel deration chart for altitude. The ventilation rate and fuel deration chart would be documented in the approval letter and on the approval marking under § 7.90. The particulate index would be documented in the approval letter. The information is necessary to ensure that the diesel engine would be operated properly and sufficient ventilating air would be available to provide miners with protection against overexposure to the diesel engine's gaseous and particulate exhaust emissions. The addition of the particulate index would provide miners some health benefits.

Section 7.84 Technical Requirements. Proposed § 7.84 would list the specific technical requirements for both category A and category B engines necessary to ensure that the diesel engine's gaseous and particulate exhaust emissions are controlled and would provide protection against overexposure of the miner to these contaminants. The technical requirements for the gaseous emissions are based on the applicable sections of the existing requirements in 30 CFR part 36. The technical requirement for a diesel particulate index would be new. These requirements would provide a health benefit to miners.

The proposal would address the design requirements of the fuel injection system that affect the performance and emission characteristics of the diesel engine. The requirement would also prevent unauthorized changes or adjustments to the fuel system which

would help ensure the integrity of the fuel system.

The Advisory Committee recommended that limits be placed on the gaseous pollutants to achieve a basically clean engine. The proposal limits the maximum levels of carbon monoxide and oxides of nitrogen (nitric oxide and nitrogen dioxide). The limit for oxides of nitrogen for category B engines is a new requirement for outby engines although it is based on § 36.26(b). These limits were derived from existing §§ 36.26(b) and 32.4(f) and have been used by MSHA for many years in approving diesel equipment. These limits have proven to be effective in providing a clean burning engine, and would provide health benefits to underground coal miners.

The Advisory Committee addressed the issue that for each engine model, a ventilation rate would be established that indicates the amount of air required to dilute carbon monoxide, nitric oxide, nitrogen dioxide, and carbon dioxide to the (8-hour) air quality standard level. A nameplate airflow quantity will be determined for each speed and horsepower rating requested by the applicant.

The proposal would require that a fuel deration chart be developed to ensure that when the engine is performing at higher altitudes, the gaseous components of carbon monoxide and oxides of nitrogen at the maximum fuel-air ratio remain below the specified levels stated.

The Advisory Committee recommended that the particulate emissions should be evaluated based on engine emission data. The proposal would establish a particulate index that would report the air quantity necessary for dilution of the diesel particulate matter to one milligram of diesel particulate per cubic meter of air for each speed and horsepower rating requested by the applicant. The amount of particulate matter would be determined by operating the diesel engine at 10 steady state conditions, introducing the exhaust gas into a dilution tunnel, and collecting a particulate sample from the diluted exhaust gas on a filter. The establishment of the particulate index would provide a health benefit to miners.

Section 7.85 Critical Characteristics. Proposed § 7.85 would list the critical characteristics that must be inspected or tested on each subpart E diesel engine prior to shipment or use. This would ensure that the performance and emission characteristics of production engines are equivalent to the

performance and emission characteristics of the laboratory test engine. This section would help to provide protection to the miner against overexposure to the diesel engine's gaseous and particulate exhaust emissions.

Section 7.86 Test Equipment and Specifications. Proposed § 7.86 would describe the principal equipment required to perform the approval tests and would divide the test equipment into three main areas: (1) dynamometer test cell; (2) gaseous emission sampling system; (3) particulate sampling system. For each area, the proposal would give specifications for the test apparatus and standard laboratory test conditions. Where appropriate, specific requirements are outlined for either category A engines or category B engines. The apparatus used for the dynamometer test cell and gaseous emission sampling system has been successfully used in the MSHA laboratory for many years and is typical of the equipment used by diesel engine manufacturers. The apparatus used for the particulate sampling system would be new and is based on the Advisory Committee's recommendation that the particulate emissions should be evaluated. Most manufacturers of diesel engines used for over-the-road applications and engine emissions laboratories use this apparatus to comply with existing Environmental Protection Agency (EPA) particulate emission requirements for that type of engine. The apparatus used for the particulate sampling system was derived from specifications meeting EPA requirements in 40 CFR part 86.1310-88.

Section 7.87 Test for Determination of Maximum Fuel-Air Ratio. Proposed § 7.87 would describe the test for determination of the maximum fuel-air ratio as referenced in the technical requirements, § 7.84(b). Where appropriate, specific requirements are outlined for either category A engines or category B engines. The test would determine the maximum concentrations of carbon monoxide and oxides of nitrogen throughout the manufacturer's specified operational range of the engine. If the prescribed levels are not exceeded, then the manufacturer's specified maximum fuel-air ratio is allowed. If the prescribed levels are exceeded, the engine manufacturer must modify the engine to conform to the requirements. The proposal would require that the tests be conducted using the equipment specified in proposed §§ 7.86(a) and 7.86(b). The test procedure specified in the proposal would provide repeatable and reliable

test results. The test procedure is currently used by MSHA for certification tests under 30 CFR part 36 except for the percent of methane injected into the engine intake air system. Existing part 36 specifies 1.5 percent by volume methane, whereas the proposal would specify 1.0 percent by volume methane. The 1.0 percent concentration would be proposed for consistency with existing part 75, which requires changes or adjustments in the mine ventilation when 1.0 percent methane or more is detected.

Section 7.88 Test for Determination of Ventilation Rate. Proposed § 7.88 would describe the test for determination of a ventilation rate as referenced in the technical requirements, § 7.84(c). Where appropriate, specific requirements are outlined for either category A engines or category B engines. The test would determine the raw exhaust gas concentration of carbon monoxide, carbon dioxide, nitric oxide, nitrogen dioxide, and methane in the exhaust.

The proposal would specify the test equipment and operating parameters required as discussed in § 7.87. Using the laboratory test data and calculations specified, ventilation numbers would be determined for each gas component at the (8-hour) air quality standard level. The proposal would specify a method for determining the ventilation rate which would represent the gaseous nameplate ventilation rate for the engine.

This test would help ensure that correct quantities of ventilating air are provided to give miners protection against overexposure to the diesel engine's gaseous emissions.

Section 7.89 Test for Determination of Particulate Index. Proposed § 7.89 would describe the test for determination of a particulate index as referenced in proposed § 7.84(e). Where appropriate, specific requirements are outlined for category A engines. The test would be performed to determine the concentration of diesel particulate matter. This concentration of particulate matter collected would be an equal weighted, average particulate emission generated from the engine at several steady-state speed and horsepower conditions. This type of test would represent average engine conditions that would be experienced by miners during normal operation of the diesel engine. The proposal would require that the test be conducted using the equipment specified in proposed §§ 7.86(a) and 7.86(c).

The proposal would give the calculations required and give a method

of determining the particulate index. The particulate index would be expressed as a ventilation number and, as recommended by the Advisory Committee, be used by mine operators for mine system design and by MSHA as a basis for evaluating and approving minimum air quantities in mine ventilation plans.

Section 7.90 Approval Marking. Proposed § 7.90 would require a legible and permanent approval plate with the assigned MSHA approval number, ventilation rate, and pertinent engine information inscribed. This plate would be required to be securely attached to the subpart E diesel engine. The proposal would allow identification of approved subpart E diesel engines in a manner that facilitates field identification of the engine as approved by MSHA.

Section 7.91 Post-Approval Product Audit. Proposed § 7.91 would require an approval holder, upon request, to supply to MSHA at no cost an approved subpart E diesel engine for audit. This request would be made no more than once a year by MSHA, except for cause. MSHA could also obtain subpart E diesel engines for audit from the approval holder or other sources such as mine suppliers or equipment distributors any time at MSHA expense, and under existing § 7.8(b) the approval holder may observe any tests conducted under the audit.

Section 7.92 New Technology. Section 7.92 of the proposal would allow approval of subpart E diesel engines that incorporate technology for which the specific requirements of subpart E are not appropriate, if MSHA determines that the diesel engine is as safe as those which meet the requirements of this subpart. This section of the proposal would apply to either new technology or new applications of existing technology to subpart E diesel engines. In order to implement this provision, MSHA would prescribe appropriate technical requirements and test procedures when such approval is sought.

2. Topic-by-Topic Discussion of 30 CFR Part 7 Subpart F

Section 7.95 Purpose and Effective Date. Proposed subpart F would establish specific requirements for MSHA approval of diesel power packages intended for use in areas of underground coal mines where permissible electric equipment is required. It would also set an effective date for implementation of the regulation.

Section 7.96 Definitions. Section 7.96 would set out the definitions which apply in subpart F. The definitions are specific to this subpart and do not apply to any other subpart. They are designed to clarify the requirements of subpart F and apply to approvals for diesel power packages in areas of mines where permissible electric equipment is required.

Section 7.97 Application Requirements. Under the proposed rule, an application for approval of a subpart F diesel power package would contain sufficient information to demonstrate compliance with the technical requirements of this subpart. The application would be accompanied by a general arrangement drawing, detail and assembly drawings of certain parts and system components, a power package checklist, documentation showing that applicable electrical systems and components have been previously approved, and a drawing list that would identify the drawings which are to be included as part of the approval process.

This section of the proposed rule would allow applicants to submit composite drawings in lieu of individual drawings. The use of composite drawings would allow manufacturers flexibility in their drawing systems.

The proposed rule would also provide for the submission of certain information which would become part of the approval documentation after approval testing has been completed. Some specifications of the diesel power package design cannot be determined prior to performing the approval tests. These specifications would include the settings of adjustable sensors and devices utilized on the diesel power package to meet the test requirements and the operating limitations of the equipment.

These specifications are necessary to ensure that the fire and explosion proof characteristics of the diesel power package are maintained.

This section would also require the applicant to submit a finalized version of the power package checklist because the checklist submitted with the initial application may not include the proper settings as determined by the approval testing.

Section 7.98 Technical Requirements. The technical requirements specified by this section are intended to ensure that the diesel engine can be operated without creating a fire or explosion hazard. This section follows the Advisory Committee recommendation that permissible diesel-powered equipment be required in areas of coal mines where permissible electric equipment is required. These technical

requirements would provide the same protection to diesel-powered equipment as is presently provided by permissible electric equipment. The primary hazards in these areas would be explosive concentrations of methane gas and combustible quantities of coal dust. These technical requirements are largely derived from 30 CFR part 36 which established requirements for diesel-powered equipment in gassy, non-coal mines. They have been modified to address the presence of combustible coal dust by reducing the maximum allowable surface temperature to 302 °F (150 °C). That maximum surface temperature is the same as is required for permissible electric equipment.

Other detailed requirements would be specified to ensure that flame arresting, spark arresting, and surface temperature limiting features are provided.

Section 7.99 Critical Characteristics. Proposed § 7.99 would list the critical characteristics that must be inspected or tested on each subpart F diesel power package prior to shipment or use to ensure that the diesel power package will not create an explosion or fire hazard, produce hazardous levels of emissions or diesel particulate, or be a safety hazard. This list of critical characteristics was developed using the applicable sections of the detailed technical requirements, § 7.98, and the proposed application requirements, § 7.97.

Section 7.100 Explosion Tests. Proposed § 7.100 would describe the explosion tests to be performed as referenced in the proposed technical requirements, § 7.98. This proposal is derived from existing § 36.46, and retains requirements for explosion testing of the intake and exhaust systems to determine the adequacy of the flame arresters and joints in preventing propagation of an explosion. It also evaluates the ability of the intake and exhaust system components to withstand internal explosions without permanent deformation, passage of flames, or glowing particles.

Additionally, the proposal would determine the lowest water level of the exhaust conditioner where it would act as an effective flame arrester, and the peak explosion pressures in each segment of the intake and exhaust system.

Section 7.101 Surface Temperature Tests. Proposed § 7.101 would describe the surface temperature tests to be performed as referenced in the proposed technical requirements, § 7.98. The requirement for these tests are retained from existing § 36.48, which requires testing of the surface temperatures of components. The surface temperature

tests would be used to determine if the temperature of any surface of the subpart F diesel power package exceeds 302 °F (150 °C). Because this machinery would operate in underground mine environments where combustible materials are present, a surface temperature of 302 °F (150 °C) or less would be necessary to avoid a potential fire hazard.

Section 7.102 Exhaust Gas Cooling Efficiency Test. Proposed § 7.102 would describe the exhaust gas cooling efficiency test to be performed as referenced in the proposed technical requirements, § 7.98. This requirement is retained from existing § 36.47 which requires testing of the exhaust gas cooling system. This test would be performed to determine whether the exhaust conditioner functions effectively and cools the exhaust gas below 170 °F (76 °C) when operating under the specified conditions.

Section 7.103 Safety System Controls Test. Proposed § 7.103 would describe the tests which must be conducted to ensure that all the safety system controls are properly designed for the system and are functioning properly. This requirement is retained from existing § 36.47 which specifies tests for specific safety sensors. The safety system controls include a variety of sensors, shutdown devices, and power package features that ensure that the engine is operating without creating a fire or explosion hazard.

One of the sensors evaluated during these tests is the exhaust gas temperature sensor. This device would shut the engine down before the exhaust gas temperature exceeds 185 °F (85 °C). This sensor is a device used in addition to the low water level shutdown and ensures that flame arresting protection is provided in the exhaust system should the low water level sensor fail to function. The Advisory Committee specifically recommended that this device be provided.

Section 7.104 Internal Static Pressure Test. Proposed § 7.104 would describe the internal static pressure test that would be performed to determine if the designs of the intake and exhaust system components are structurally sound as referenced in the technical requirements, § 7.98, and the explosion tests, § 7.100.

Included are installation procedures, instrumentation specifications, procedures for conducting the tests, and criteria for evaluating the test results. The specified procedures are intended to ensure that test results are reliable, repeatable and consistent.

MSHA has designed all of the procedures to be easily understood by applicants who may choose to conduct their own testing, or by third party testing facilities, under 30 CFR part 7.

Section 7.105 Approval Marking. Section 7.105 of the proposal would require a legible and permanent approval plate with the assigned MSHA approval number and the exhaust conditioner grade limitation inscribed. This plate would be required to be securely attached to the subpart F diesel power package in a way that would not impair any explosion proof characteristics of the machine. The proposal would allow identification of approved subpart F diesel power packages in a manner that facilitates field identification of the machine as approved by MSHA, and would restrict operation of the machine to the maximum grade specified on the approval plate.

Section 7.106 Post-Approval Product Audit. Proposed § 7.106 would require an approval holder, upon request, to supply to MSHA at no cost an approved subpart F diesel power package for audit. This request would be made no more than once a year by MSHA, except for cause. MSHA could also obtain subpart F diesel power packages for audit from the approval holder or other sources such as mine suppliers or equipment distributors anytime at MSHA expense, and under existing § 7.8(b) the approval holder may observe any tests conducted under the audit.

Section 7.107 New Technology. Section 7.107 of the proposal would allow approval of subpart F diesel power packages that incorporate technology for which the specific requirements of subpart F are not appropriate, if MSHA determines that the diesel power package is as safe as those which meet the requirements of this subpart. This section of the proposal would apply to either new technology or new applications of existing technology to subpart F diesel power packages. In order to implement this provision, MSHA would prescribe appropriate technical requirements and test procedures when such approval is sought.

Section 7.108 Power Package Checklist. Proposed § 7.108 would provide that the approval holder provide with each approved diesel power package, a power package checklist which identifies the features that must be checked or tested to determine if the subpart F diesel power package is in approved condition. MSHA envisions that this checklist would identify many of the critical characteristics specified in

§ 7.99. The checklist would also include the tests that would be performed to ensure that the safety shutdown system devices are functioning properly. Illustrations would be required to assist the user in identifying specific features on the diesel power package. Although proposed 30 CFR part 75 maintenance requirements would require the use of these checklists in equipment maintenance programs, MSHA does not intend that the subpart F power package checklist be used as a maintenance manual. It would be provided in addition to the manufacturer's maintenance manual.

3. Topic-by-Topic Discussion of 30 CFR part 7 Subpart G

Section 7.111 Purpose and Effective Date. Proposed subpart G would establish specific requirements for MSHA approval of diesel power packages intended for use in areas of underground coal mines where permissible electric equipment is not required. It would also set an effective date for implementation of the regulation.

Section 7.112 Definitions. Section 7.112 would set out the definitions which apply in subpart G. The definitions are specific to this subpart and do not apply to any other subpart. They are designed to clarify the requirements of subpart G and apply to approvals for diesel power packages in areas of mines where permissible electric equipment is not required.

Section 7.113 Application Requirements. Under the proposed rule, an application for approval of a subpart G diesel power package would contain sufficient information to demonstrate compliance with the technical requirements of this subpart. The application would be accompanied by a general arrangement drawing, detail and assembly drawings of certain parts and system components, a power package checklist, and a drawing list that would identify the drawings which are to be included as part of the approval process.

This section of the proposed rule would allow applicants to submit composite drawings in lieu of individual drawings. The use of composite drawings would allow manufacturers flexibility in their drawing systems.

The proposed rule would also provide for the submission of certain information which would become part of the approval documentation after approval testing has been completed. Some specifications of the diesel power package design cannot be determined prior to performing the approval tests. These specifications would include the settings of adjustable sensors and

devices utilized on the diesel power package to meet the test requirements and the operating limitations of the equipment.

These specifications are necessary to ensure that the characteristics of the diesel power package which provide fire protection are maintained.

This section would also require the applicant to submit a finalized version of the power package checklist because the checklist submitted with the initial application may not include the proper settings as determined by the approval testing.

Section 7.114 Technical Requirements. The technical requirements specified by this section are intended to ensure that the diesel engine can be operated without creating a fire hazard. This section follows the Advisory Committee recommendation that surface temperature controls be required on all diesel-powered equipment (except limited class equipment) operating in areas of mines where nonpermissible electric equipment is allowed. The surface temperature controls would maintain external surfaces of the diesel power package below temperatures that could ignite combustible materials. The primary hazard in these areas would be combustible quantities of coal dust. The technical requirements are largely derived from existing part 36 which established requirements for diesel-powered equipment in gassy, non-coal mines. The requirements have been modified by eliminating the explosion proof requirements to address the outby areas of mines where explosive concentrations of methane are not present and by reducing the maximum allowable surface temperature to 302 °F (150 °C) to address the presence of combustible coal dust.

Other detailed requirements would be specified to ensure that surface temperature limiting features are provided.

Section 7.115 Critical Characteristics. Proposed § 7.115 would list the critical characteristics that must be inspected or tested on each subpart G diesel power package prior to shipment or use to ensure that the diesel power package will not create a fire hazard, produce hazardous levels of emissions or particulate, or be a safety hazard. This list of critical characteristics was developed using the applicable sections of the detailed technical requirements, § 7.114, and the proposed application requirements, § 7.113.

Section 7.116 Surface Temperature Tests. Proposed § 7.116 would describe

the surface temperature tests to be performed as referenced in the proposed technical requirements, § 7.114. The requirements for these tests are retained from existing § 36.48, which requires testing of the surface temperatures of components. The surface temperature tests would be necessary to determine if the temperature of any surface of the subpart G diesel power package exceeds 302 °F (150 °C). Because this machinery would operate in underground mine environments where combustible materials are present, a surface temperature of 302 °F (150 °C) or less would be necessary to avoid a potential fire hazard.

Section 7.117 Exhaust Gas Cooling Efficiency Test. Proposed § 7.117 would describe the exhaust gas cooling efficiency test that would be performed as referenced in the proposed technical requirements, § 7.114. This requirement is retained from existing § 36.47 which requires testing of the exhaust gas cooling system. This test would be performed to determine whether the exhaust conditioner functions effectively and cools the exhaust gas below 302 °F (150 °C) when operating under the specified conditions.

Section 7.118 Safety System Controls Test. Proposed § 7.118 would describe the tests which must be conducted to ensure that all the safety system controls are properly designed for the system and are functioning properly. This requirement is retained from existing § 36.47 which specifies tests for specific safety sensors. The safety system controls include a variety of sensors, shutdown devices, and power package features that ensure that the engine is operating without creating a fire hazard.

Included are installation procedures, instrumentation specifications, procedures for conducting the tests and criteria for evaluating the test results. The specified procedures are intended to ensure that test results are reliable, repeatable and consistent.

MSHA has designed all of the procedures to be easily understood by applicants who may choose to conduct their own testing, or by third party testing facilities, under 30 CFR part 7.

Section 7.119 Approval Marking. Section 7.119 of the proposal would require a legible and permanent approval plate with the assigned MSHA approval number inscribed. This plate would be required to be securely attached to the subpart G diesel power package. The proposal would allow identification of approved subpart G diesel power packages in a manner that facilitates field identification of the machine as approved by MSHA.

Section 7.120 Post-Approval Product Audit. Proposed § 7.120 would require an approval holder, upon request, to supply to MSHA at no cost an approved subpart G diesel power package for audit. This request would be made no more than once a year by MSHA, except for cause. MSHA could also obtain subpart G diesel power packages for audit from the approval holder or other sources such as mine suppliers or equipment distributors anytime at MSHA expense, and under existing § 7.8(b) the approval holder may observe any tests conducted under the audit.

Section 7.121 New Technology. Section 7.121 of the proposal would allow approval of subpart G diesel power packages that incorporate technology for which the specific requirements of subpart G are not appropriate, if MSHA determines that the diesel power package is as safe as those which meet the requirements of this subpart. This section of the proposal would apply to either new technology or new applications of existing technology to subpart G diesel power packages. In order to implement this provision, MSHA would prescribe appropriate technical requirements and test procedures when such approval is sought.

Section 7.122 Power Package Checklist. Proposed § 7.122 would provide that the approval holder provide with each approved diesel power package, a power package checklist which identifies the features that must be checked or tested to determine if the subpart G diesel power package is in approved condition. MSHA envisions that this checklist would identify many of the critical characteristics specified in § 7.115. The checklist would also include the tests that would be performed to ensure that the safety shutdown system devices are functioning properly. Illustrations would be required to assist the user in identifying specific features on the diesel power package. Although proposed 30 CFR part 75 maintenance requirements would require the use of these checklists in equipment maintenance programs, MSHA does not intend that the subpart G power package checklist be used as a maintenance manual. It would be provided in addition to the manufacturer's maintenance manual.

B. 30 CFR Part 70 Discussion

From the beginning of its assignment, the Committee regarded the health effects of diesel exhaust as a key area to be addressed in its deliberations. At the same time, the Committee expressed concern about the ability to assess all

the health effects of diesel exhaust based on the limited amount of data available at that time. As part of its introductory materials, MSHA gave each Committee member a draft regulation on occupational exposure limits and environmental monitoring. The staff representative from NIOSH presented some information on the health effects of exposure to diesel emissions. The Committee requested additional information from experts and the Committee Chairman appointed one member to organize a panel of health and research experts in the field of diesel exhaust. The panel was convened at the third Committee meeting where health issues were extensively discussed. The Committee Chairman appointed a special subcommittee to determine whether an exposure level of diesel particulate could be recommended and how the diesel particulate could be controlled and monitored. The Committee adopted the subcommittee's report and recommendations.

In its final recommendations, the Committee emphasized the importance of the health implications of diesel exhaust relating to both the gaseous and particulate components.

Based on available information that whole diesel exhaust represents a probable risk for causing human lung cancer, the Committee recommended that MSHA regulate the use of diesels in underground coal mines to protect the health of miners. The Committee recommended regulation by monitoring and controlling the diesel particulate, but could not recommend a specific level of exposure based on the existing data and current available technology for monitoring the amount of diesel particulate in underground coal mines. Following the Committee's decision not to provide a recommendation, MSHA is not proposing a standard to set a specific exposure level for the diesel particulate at this time.

In August 1988 after the Committee's report was submitted to the Secretary, the National Institute for Occupational Safety and Health issued its "Current Intelligence Bulletin 50" on the carcinogenic effects of exposure to diesel exhaust. NIOSH recommended that whole diesel exhaust be regarded as a potential occupational carcinogen in conformance with the cancer policy of the Occupational Safety and Health Administration.

Regulatory action to deal with diesel exhaust as a probable human carcinogen would involve two primary components: quantification of its potential effect on workers and

development of a means to determine the levels at which diesel exhaust is present in the workplace. Soon after receipt of the Committee's recommendations, MSHA began to coordinate research efforts with NIOSH and the Bureau of Mines (BOM) in order to determine at what diesel particulate exposure levels health effects occur, and how to develop a sampling strategy for the diesel particulate. MSHA and BOM are testing and evaluating a sampling method for the detection of diesel particulate in underground coal mines. NIOSH is in the initial steps of conducting a risk assessment based upon animal study data. These steps are being taken as a result of the Committee's recommendations.

MSHA believes that the NIOSH risk assessment is an important step in the development of a particulate standard for diesel emissions. Because the risk assessment could form the basis on which to develop a standard, MSHA will make the risk assessment available for public comment soon after it is received from NIOSH. The risk assessment should be available from NIOSH by early 1990.

The Committee recommended that control of the diesel particulate underground could be accomplished by several means including fuel requirements, equipment design, and in-mine controls such as the ventilation system and equipment maintenance. The Committee recommended that particulate emissions be evaluated through the machine approval process by determining the appropriate air quantity for dilution of particulate emissions and reporting that quantity as an index of that necessary for dilution to one milligram of diesel particulate per cubic meter of air. That ventilation rate could then be used for mine system design and as a basis for evaluating and approving minimum air quantities in mine ventilation plans. MSHA has implemented the Committee's recommended approach in the proposals for 30 CFR part 7, subpart E (approval schedule for diesel engines) and 30 CFR part 75 (fuel, ventilating air requirements and equipment maintenance requirements).

MSHA believes that the proposed rule provisions that address diesel engine approval, fuel, ventilating air, a particulate index, and better equipment maintenance will result in cleaner running diesel engines, lowering the amount of potentially harmful diesel emissions. These requirements would provide a health benefit to miners.

Discussions on those specific proposals are found elsewhere in this document. MSHA expects to address the

question surrounding exposure levels of the diesel particulate in a later rulemaking after the available data are more fully evaluated.

The Advisory Committee recommended that exposure limits for the gaseous contaminants in diesel exhaust should not be unique from the exposure limits set for the same contaminants generated by other mining sources such as blasting. In line with that recommendation, MSHA's air quality proposed rule published on August 29, 1989 (54 FR 35760), includes permissible exposure limits for carbon dioxide, carbon monoxide, nitric oxide, nitrogen dioxide, and sulfur dioxide. The Agency intends that the permissible exposure limits arrived at through the air quality rulemaking will address the hazards to miners posed by such gases, regardless of their source. Because of the particular importance of such standards to miners exposed to diesel exhaust, the Agency further intends that the air quality rulemaking will be final by the time that this rulemaking on the approval of and monitoring requirements for diesel equipment is complete.

Another recommendation made by the Committee concerns the approach that MSHA should use in exposure monitoring for gaseous emissions. The Committee recommended that mine operators should be required to periodically sample for oxides of nitrogen (NO and NO₂) and carbon monoxide (CO). In addition, sulfur dioxide (SO₂) would be sampled when diesel fuel was in use that contained more than 0.25 percent of sulfur. The Committee further recommended that MSHA should develop a sampling strategy that uses return air sampling to trigger personal exposure monitoring. These recommendations would be implemented by MSHA's proposals for §§ 70.1900 and 70.1901.

The proposed requirements would follow the Committee's recommendation for mine operators to take representative samples of carbon monoxide (CO), nitric oxide (NO) and nitrogen dioxide (NO₂). Those samples would be taken in the ventilation return airways on a weekly basis.

The proposal to require sampling in the return airway is based on knowledge of the specific operation of equipment underground and the behavior of gaseous emissions generated by these machines. Because, for example, nitrogen dioxide generated by the diesel equipment would be found in the immediate return airway of a section where diesel-powered equipment was in use, it is therefore logical to sample the immediate return

airway on a consistent basis as a trigger to personal exposure monitoring. If the sample taken in the immediate return was not high enough to trigger personal sampling, no personal exposure monitoring would be required at that time. Personal exposure monitoring would therefore be reduced in frequency provided that the weekly samples did not exceed 50 percent of the permissible exposure limit (PEL) for any of the gases required. Samples exceeding 50 percent of the PEL, as referenced in proposed § 72.100, would trigger personal exposure monitoring by the mine operator. It should be noted that the revised air quality standards for coal and metal-nonmetal mines presently under development would update the threshold limit values (TLVs[®]) currently found in existing § 75.301-2 and refer to those values as "permissible exposure limits" (PELs). For consistency, MSHA incorporated the generic air monitoring proposal found in the proposed air quality standards with the area and personal monitoring requirements found in proposed §§ 70.1900 and 70.1901 which are published today. Thus, proposed §§ 72.100 and 72.200, which are referenced in today's proposal can be found at 54 FR 35829-35830 (August 29, 1989). MSHA specifically solicits comments from interested persons on today's proposal and the appropriate interrelationship of the area and personal exposure monitoring provisions to the proposed air quality rules.

Once the personal monitoring requirements are triggered, mine operators would be required by § 70.1901 to monitor the personal exposure of miners which would be representative of affected miners, exposure under § 70.1901. Additionally, when 75 percent of the PEL concentration is found, personal monitoring would be conducted on each operational shift. When personal exposure monitoring results indicate levels that are less than 100 percent of the PEL with 95 percent confidence, area sampling requirements under § 70.1900 would be reestablished.

The proposal would address the frequency and procedures for exposure monitoring.

Frequency. The proposal would require that weekly representative samples for carbon monoxide, nitric oxide, and nitrogen dioxide be taken. In addition, when an operator uses fuel which contains more than 0.25 percent of sulfur, the operator must take representative samples of sulfur dioxide. The proposal would require an operator to provide a certified statement to MSHA inspectors as to the fuel's sulfur

content when fuel is used which contains 0.25 percent or less of sulfur. Operators who use fuel with 0.25 percent or less of sulfur, and who provide a certified statement to the MSHA inspector as to the sulfur content, would not need to take representative samples for sulfur dioxide. The purpose of the certified statement would be to require verification of the sulfur content (percent by weight) of the fuel.

In order to address the Committee's recommendation, MSHA is proposing that a minimum of weekly samples (that is, one concentration determination per week per substance) be taken in the immediate return of any split of air in which diesel equipment is used. MSHA believes this will provide adequate screening for the targeted contaminants and the triggering of the more comprehensive personal monitoring requirement. The proposal intends the weekly samples to be a minimum requirement. It is not MSHA's intent to require an alteration of a more frequent sampling program if one is already established at the mine.

Sampling Procedure. The proposal would require that weekly samples be taken in the immediate return airways of any split of air where diesel equipment is used in a mine. The immediate return would be interpreted as an accessible area of a mechanized mining unit at the interface between areas classified as intake and return air courses. Also the term could include the area normally called the "tailgate" in a longwall operation, or an area immediately in by the last piece of operating diesel equipment during longwall moves where additional dilution of the air split has not occurred. Other situations may provide different parameters for an immediate return area.

Proposed § 70.1900(b) would require that the weekly monitoring be conducted according to the proposed air quality standards in § 72.200 (c), (d), (e), and (f), and that such samples shall be collected during periods when contaminant concentrations are representative of peak exposures to miners at risk, and when required by § 72.200(a). Proposed § 72.200 (c), (d), (e), and (f) provide the monitoring procedures, recordkeeping, access to exposure records, and observation of monitoring requirements from the air quality proposed rules. Because these procedures are generic to any mine and any contaminant, MSHA has proposed that they are applicable to the area exposure monitoring recommended by the Advisory Committee. A full explanation of these paragraphs can be

found in the preamble for the air quality proposal located at 54 FR 35777 (August 29, 1989).

Paragraph (b) of this section would require that samples shall be taken during periods when contaminant concentrations are representative of peak exposure to miners at risk. This provision seeks to establish the necessity of taking samples during periods of maximum diesel activity. Maximum diesel activity could occur when maximum numbers of equipment are operating on a section or when the diesel engines on a section are operating under a maximum load. This provision does not place its primary emphasis on an absolute peak concentration but relies on an operator to determine when maximum diesel activity is likely to occur, and it requires sampling during that period.

This paragraph also states that sampling is required under proposed § 72.200(a)(1) when the operator has reason to believe that there would be an increase in contaminant concentrations such as during a change in production, process, materials, equipment, engineering, or when administrative controls would increase a contaminant's concentration above the PEL. This provision requires that the operator, through sample interpretation, determine the most appropriate sampling schedules which will give the best indication of peak concentration periods. A full explanation of this provision can be found at 54 FR 35777 (August 29, 1989).

The proposal in paragraph (c) of this section would require personal exposure monitoring according to § 70.1901 when the results of the sampling conducted in accordance with § 70.1900(b) exceed 50 percent of the PEL concentration listed in § 72.100. The Advisory Committee recommended area sampling requirements in order to create an appropriate and efficient means of determining when personal exposure monitoring would be required to protect the health of miners. Personal monitoring would be required only after area samples showed concentrations over 50 percent of the PEL concentration. This concept is referred to as an action level. The Advisory Committee considered a range of action levels which would trigger personal monitoring, each with its own rationale and justification. However, the Committee came to no final recommendation on this issue.

The proposal intends that an action level of 50 percent of the PEL concentration is an appropriate trigger for establishing a personal monitoring

program. MSHA believes there is risk of overexposure to miners when weekly immediate return air samples exceed 50 percent of the PEL concentration, given the variability associated with such things as, but not limited to, sampling and analytical error, diesel activity level, ventilation rates, and duty cycles. In addition, the air in the immediate return would be a combination of several air splits of lesser quantities and therefore would be a diluted concentration of possible personal exposures in other areas of the mine ventilated by that air. MSHA believes this action level will not be burdensome upon the operator since previous MSHA test results show the majority of samples fall below 50 percent of the PEL concentration.

The Agency solicits comments on whether a trigger concentration different than that specified would be appropriate. For example, MSHA could allow a different concentration to be approved by the District Manager if sampling conducted in accordance with § 75.390(b)(4) shows that a different trigger concentration would indicate the need for personal monitoring in accordance with proposed § 70.1901. In this way, MSHA could be assured that a return air area sample would be capable of indicating the need for personal monitoring at a percentage of the PEL concentration different from 50 percent. Such a provision could be used to prevent a cycle where area sampling indicates the need for personal monitoring, and subsequent personal monitoring results in the re-institution of area sampling which then indicates the need for personal monitoring.

Provisions for the 50 percent action level concept have been suggested by Nelson A. Leidel in NIOSH Publication No. 77-173 and is used by the Occupational Safety and Health Administration. Since the 50 percent action level is normally applied to personal exposure monitoring, MSHA solicits comments on the establishment of 50 percent of the PEL concentration as an action level and on its applicability to an area monitoring program. Action levels are instituted in order to minimize the risk that employees will be overexposed due to variability associated with monitoring programs. This concept is largely based on random statistical considerations, which do not take into account unpredicted trends or sudden disturbances caused by overt changes in ventilation rates, decreased efficiencies of engine performance, or any other deviation in equipment performance

which may affect either the output or control of diesel emissions.

Personal exposure monitoring. Proposed § 70.1901 would state the personal exposure monitoring requirements which are triggered when the action level set in § 70.1900(c) is exceeded. Thus, when samples from the immediate return airways indicate levels exceeding 50 percent of the PEL concentration of the targeted substances, the operator would be required to begin a personal exposure monitoring program for each applicable substance.

Section 70.1901(a) would provide that operators be required to maintain exposure of all miners at or below the appropriate PEL. It would also require that when work shifts are greater than 8 hours in duration, 8-hour time weighted limits should be adjusted proportionally.

The Advisory Committee considered establishing specific limits for the gaseous diesel exhaust components. However, the Committee determined through its deliberations that suitable protection for miners would be achieved by the use of the coal mine air quality standards as they exist or may be changed in the future. The Committee also determined that consistency with established air quality standards was desirable. MSHA agrees with this recommendation. It is important that the concepts of each limit value and associated measurement strategy are used correctly. When personal exposures of an 8 hour duration are determined, those measurements should be correlated to the limits associated with 8 hour exposures.

Section 70.1901(b) requires the mine operator to begin a personal monitoring program once a sample in the immediate return airway exceeds 50 percent of the PEL concentration. The proposal recommends no minimum time limit to determine when the personal exposure monitoring program would start.

MSHA believes that a program may be initiated as early as the following shift since most measurement methods which might be used for the return air sampling could be adapted for personal exposure monitoring. It is not MSHA's intent to preclude the possibility of modification to a monitoring program. For instance, an operator may be using certified detector tubes for its return airway sampling which on some occasions indicates a level exceeding 50 percent of the PEL concentration. The operator may find it necessary to use the same measurement tool; i.e., detector tubes, to establish a personal monitoring program on a subsequent shift. MSHA believes that an operator which has monitoring capability for return air

samples has capability of establishing a personal monitoring program in a very short period of time. However, once the monitoring program has been initiated, the operator may find that other sampling methods and strategies more adequately address exposures and therefore change those procedures and methods.

Section 70.1901(b) also requires the mine operator to monitor personal exposures which shall be representative of the affected miners' exposures. MSHA's intent is not to require every miner in the affected air split to be personally monitored. The proposal does intend that a monitoring program would be established which will characterize the exposures of all the miners' most likely by sampling those whose duties put them at greatest risk of excessive exposure to diesel emissions. Therefore, a personal sampling program would not require separate sampling for each exposed miner but would require enough sampling for the operator to determine each miner's probable exposure and establish an individual exposure record for each miner who frequents an area requiring personal sampling. For example, if a number of miners perform essentially the same job, under the same conditions, or are in comparable locations over the same periods of time, one personal sample may be sufficient to assess each miner's exposure and assign that exposure to each miner's record.

Sections 70.1901 (c) and (d) would require the operator to determine the percentage of personal exposure in relation to the appropriate PEL. If the sample indicates an exposure which exceeds 75 percent of the PEL, the operator would be required to maintain an adequate monitoring program for each shift during which miners are exposed in the area. If the samples indicate an exposure below 100 percent of the PEL with 95 percent statistical confidence, the operator may revert back to the return air sampling provisions detailed in proposed § 70.1900.

MSHA intends that personal monitoring would continue until the concentration was below 100 percent of the PEL, as determined with 95 percent confidence. This would ensure that the operator has determined that the affected miners' exposures are below the PEL with statistical certainty. Specifying only the confidence level allows the operator to choose from a full range of sampling and analytical options available. In choosing the sampling and analytical methods, the operator would be able to identify the number of samples as well as the concentration

range needed to ensure that the limits are not exceeded at a 95 percent confidence level. Although an operator using detector tubes would have a different strategy than an operator using an electrochemical analyzer, both methods could be used to determine whether exposures were above or below 100 percent of the PEL at 95 percent confidence.

C. 30 CFR Part 75 General Discussion

The Advisory Committee also addressed the safe use of diesel-powered equipment in such areas as fuel handling and storage, work practices, equipment maintenance, and qualification for maintenance personnel. Machine-related features providing protection from possible hazards are separately addressed under the proposed approval requirements in part 7, except for the scope and requirements of the limited class of diesel-powered equipment.

MSHA provided the Committee with a draft rule for part 75 safety standards during the Committee's deliberations. In addition to that initial draft rule, and other information and data supplied to the Committee, the Committee Chairman and staff redeveloped the draft in order to address some of the concerns raised by Committee review and discussion of the issues. One of the Committee members also redeveloped the draft and submitted his version to the Committee for discussion and comment. Ultimately, the Committee relied on the draft developed by the Chairman as the basis for many of its recommendations. This draft is provided as an appendix to the Committee's final report. Copies of the Committee report may be obtained from MSHA at the address listed above.

The proposed rule would implement the Committee recommendations which would affect various aspects of the safety and health of miners when using diesel-powered equipment underground. Proper underground use and maintenance of diesel fuel and diesel-powered equipment would be necessary to protect against mine explosions and fires. The proposed rule would be new in providing for standards to control the use, handling, storage and transfer of diesel fuel; the type of diesel fuel for underground use; a time schedule for the introduction of approved diesel-powered equipment underground; the development of a limited class of outby diesel-powered equipment which does not need to meet newly proposed approval schedules; requirements for the use of stationary diesel-powered equipment such as air compressors, fire suppression systems, diesel fuel starting

aids; maintenance of diesel-powered equipment; training and qualification for diesel mechanics; and traffic controls underground.

1. Other Issues Under 30 CFR Part 75

Amendment of Equipment Standards and Other Revisions. At this stage of the rulemaking process, the Agency anticipates that the final rule would include a number of other amendments to existing part 75. Most of these would require applicability to diesel-powered equipment. MSHA solicits comments on whether these sections or other sections should be made applicable to diesel-powered equipment: §§ 75.313, 75.400, 75.400-2, 75.523, 75.523-1, 75.523-2, 75.1107-1, 75.1710, and 75.1710-1. Section 75.313 would additionally require the use of a methane monitor on all diesel equipment used to load coal. Section 75.400 would prohibit the accumulation of coal dust, including float coal dust, loose coal, and other combustible materials on diesel-powered equipment. Section 75.400-2 would be applicable to diesel-powered equipment. Section 75.523 would additionally require that diesel-powered face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency. Section 75.523-1 would include self-propelled diesel-powered face equipment. Section 75.523-2 would include self-propelled diesel-powered face equipment. Section 75.1107-1 would include unattended diesel-powered equipment. Sections 75.1710 and 75.1710-1 would include diesel-powered face equipment and diesel-powered shuttle cars.

2. Topic-by-Topic Discussion of 30 CFR Part 75

Section 75.390 Ventilating Air Where Diesel-Powered Equipment is Operated. In its final recommendations, the Committee emphasized the need to establish minimum ventilation requirements where diesel-powered equipment is operated underground. The establishment and application of minimum ventilation rates were addressed by the Committee in all three major areas of concern: equipment approval, use, and health recommendations. The establishment of minimum ventilation rates should provide a health benefit to miners.

In addressing equipment specifications, the Committee recommended that only approved diesel engines be used underground and that these engines be evaluated for both gaseous and particulate emissions. Based upon these evaluations, minimum ventilation rates should be determined

and reported as the approval plate air quantity and particulate index.

The Committee's health recommendations also addressed minimum ventilation quantities by determining the appropriate air quantity for dilution of emissions based upon the emission data considered during the engine approval. The particulate index would be reported as the quantity of air needed to dilute the particulate emissions to one milligram per cubic meter of air. The Committee further recommended that both the approval plate air quantity and the particulate index be used for ventilation system design by the mine operator and in the evaluation and approval of minimum air quantities in ventilation plans by MSHA.

The Committee addressed the implementation of these recommendations in their use recommendations for the establishment of minimum ventilation rates and making the minimum quantities part of the approved mine ventilation plan currently required by existing § 75.316. They recommended that these minimum quantities should be based on the engine approval plate air quantities and particulate index and that provisions should be made for multiple units operating in the same ventilation current or split. The Committee also recommended that provisions be made to allow an adjusted minimum ventilation requirement if operating experience and work place sampling so indicated. The concept of an adjusted minimum ventilation requirement was included to allow for the requirement of a greater minimum quantity or a lesser minimum quantity than that based upon approval test data.

Proposed § 75.390 is based on the Committee recommendations addressing minimum ventilation requirements. Paragraph (a) of the proposal would require that the minimum quantity of air in any split of air where diesel equipment is operated would be at least that which is specified in the approval plate air quantity. This provision is intended to apply to any individual unit of diesel-powered equipment. MSHA envisions applying this requirement to all equipment having an approval plate air quantity and would implement this requirement as applicable in accordance with proposed § 75.1907 addressed elsewhere in this document.

Proposed paragraph (b) addresses the inclusion of minimum ventilation quantities in the mine ventilation plan. Paragraph (b)(1) would require the mine operator to specify the minimum air quantity on any split of air where

multiple diesel units are operating in accordance with the formula included. This requirement would also apply where face equipment was being installed or removed. The formula is designed to account for the differences in duty cycles of diesel equipment in that the approval plate air quantity for gases is based upon the "worst" point of the operating range of the equipment relative to gaseous emissions. Under normal operating conditions, multiple units would not all be operating in these points at the same time.

Proposed paragraph (b)(2) would require a minimum ventilation rate as determined by the particulate index if it were in excess of that determined in paragraph (b)(1) of this section. MSHA does not envision using a multiplication factor of less than one for multiple units since the particulate index is determined in the approval process using a duty cycle. Therefore, it is proposed that the minimum quantities based upon the particulate index be additive for multiple units.

MSHA envisions a two-phase application of the particulate index in approving minimum ventilation quantities. In the first phase, MSHA would consider the current particulate exposure to respirable coal mine dust compared to the applicable standard such as 2.0 milligrams per cubic meter of air. For example, if a mine was currently using three pieces of diesel equipment in a production cycle and the average respirable dust concentrations were 1 milligram per cubic meter and the mine operator proposed the introduction of a fourth piece of equipment to the production cycle, MSHA would then consider the current respirable dust concentrations along with the particulate index for the additional piece of equipment in approving a new minimum air quantity. Since the difference between normal and the allowable respirable dust concentrations in this example is 1 milligram per cubic meter, MSHA would require at least the amount of air, based upon the particulate index, that would be expected to add no more than one milligram per cubic meter. In this example, this would be the particulate index air quantity. If the difference explained in this example were half a milligram per cubic meter, MSHA would require twice the particulate index air quantity and so forth. MSHA would expect to apply this approach until a specific diesel particulate standard is established and promulgated.

Upon promulgation of a diesel particulate standard, phase two of this provision would become effective. Here

MSHA intends to determine a minimum quantity based on the particulate index to dilute to whatever standard is set for diesel particulate. Since the particulate index is the amount of air needed to dilute particulate emissions to 1 milligram per cubic meter, for diesel particulate standards of 0.1, 0.5, 1.0, or 2.0 the corresponding minimum air quantities would be 10, 2, 1, and 0.5 times the particulate index, respectively.

Paragraph (b)(3) of the proposal would exclude certain equipment types from the calculation of minimum quantities in paragraphs (b) (1) and (2) of this section. These exclusions would be equipment which intermittently operates and therefore would not add significantly to exposures.

Paragraph (b)(4) of the proposal specifies the information that would be required to be submitted to MSHA to use an air quantity different than those determined in paragraphs (b) (1) or (2). The data submitted would be collected under conditions meeting paragraphs (b) (1) or (2) and based upon those results, MSHA would evaluate a proposed different air quantity.

Section 75.1901 Diesel Fuel. The Committee made recommendations concerning the diesel fuel used to operate equipment underground. The proposal is based on the Committee recommendations and the general requirements in the draft rule developed by the Committee Chairman. Proposed § 75.1901 would require the use of low volatile hydrocarbon fuel classified as ASTM D975 No. 2 diesel fuel having a flash point of 125 °F or greater. This classification would require fuel to have a sulfur content of less than 0.5 percent by weight but in accordance with the Committee recommendation, if fuel having a sulfur content greater than 0.25 percent by weight is used, § 70.1900 of this proposal would require sampling for sulfur dioxide. The use of lower sulfur fuel would provide a health benefit to miners.

Sections 75.1902, 75.1903, 75.1904, 75.1905, and 75.1906 Fuel Handling and Storage. The Committee recommended that fuel handling and storage be addressed as a system including the storage facilities; the transfer of fuel from storage tanks to transportation vehicles and ultimately into the equipment; the design and construction of mobile storage facilities; and the transportation of fuel from one location to another. The Committee concluded that the general requirements as drafted by the Committee Chairman should be followed. These Committee recommendations are included in proposed § 75.1902 which lists general requirements for diesel fuel storage

underground. Proposed § 75.1903 specifies construction and safety precautions. Section 75.1904 of the proposal details requirements for diesel fuel storage tanks. Section 75.1905 of the proposal lists requirements for the transfer of diesel fuel including through pipelines, and proposed § 75.1906 gives requirements for containers used to transport diesel fuel underground. MSHA specifically requests comments on whether manual pouring for transfer should be allowed, and under what conditions it can occur.

The proposed requirements in these sections are based on the Committee's recommendations for providing fire protection for the storage and handling of diesel fuel underground. Two areas of these proposed requirements were modified from the Committee's recommendations. The Committee originally recommended that the electrical systems located in diesel fuel storage areas meet the requirements of the National Electric Code (NEC). Upon researching this recommendation, MSHA found that for areas where a Class II combustible liquid is used, which includes diesel fuel, the NEC requires that electrical equipment meet the requirements for "normal" areas as specified by the NEC. Therefore, MSHA believes that the existing regulations in part 75 would be applicable and no further requirements are being proposed. This NEC requirement would be applicable to combustible liquids having a flash point of 100 degrees Fahrenheit or above up to an elevation of approximately 11,000 feet above sea level. Since proposed § 75.1901 limits diesel fuel to No. 2 diesel fuel with flash points of 125 °F or greater, elevation would not affect the provisions and the NEC requirements would not be necessary.

Another area where the Committee's recommendation was modified is in proposed § 75.1903(b) which would require drain systems and sumps in fixed storage facilities to be capable of handling 150 percent of the maximum capacity of the fuel storage system. The Committee recommendation addresses 100 percent of the fuel storage capacity; however, MSHA believes that since water would also tend to accumulate in these sumps, 150 percent would provide a safeguard so that spilled fuel could be contained.

Sections 75.1907 and 75.1910 Approved Diesel-Powered Equipment. Section 75.1907 of the proposal would require, with certain exceptions, that diesel-powered equipment used in underground coal mines be approved. This section would establish equipment classes that would be exempt and time

frames in which equipment not specifically approved for use in coal mines would be required to have additional health and safety related features.

Throughout this section, references are made to machine approval requirements under 30 CFR part 7, subparts H and I. In another part of today's Federal Register, the Agency has published an advance notice of proposed rulemaking which describes the scope of the expected machine approval requirements pursuant to part 7 subparts H and I. Briefly, such requirements would consist of an approved engine under proposed subpart E, an approved power package under proposed subparts F or G, and such other machine related features as would be necessary to provide fire and explosion protection, and safety features appropriate to the area of the mine where the equipment would be used. MSHA expects to receive comments from interested parties on the scope of the machine approval. However, at this time, this terminology has been selected to convey the Agency's intent to require machine approval. Subpart H refers to machine approval requirements that provide fire and explosion protection for use in areas of underground coal mines where permissible electric equipment is required, and subpart I refers to machine approval requirements that provide protection against hazards in areas of underground coal mines where permissible electric equipment is not required.

MSHA expects that subpart H machines would incorporate a power package approved under part 7 subpart F, an engine approved under proposed subpart E and include electrical systems that meet the requirements of 30 CFR Parts 18 or 27. MSHA expects that subpart I machines would incorporate a power package approved under proposed part 7, subpart G, electrical systems that meet the requirements of part 18 and could use an engine approved under proposed part 7, subpart E. Both subparts H and I would establish requirements to address other machine related safety features specified in Parts 18, 31, 32, 36 and 75. References to machine approval under subparts H or I are retained to convey the manner in which the Agency would expect to implement the Advisory Committee recommendations.

Proposed paragraph (a) of § 75.1907 would require that, with two exceptions, all diesel-powered equipment used in an underground coal mine must be approved. One exception is found in proposed § 75.1909 which would

establish requirements for a limited class of light duty equipment. The other exception is found in proposed § 75.1910 which would establish requirements for stationary unattended equipment. Thus, neither limited class light duty equipment nor stationary unattended equipment would be required to receive formal Agency approval. Compliance with the cited requirements would be established by MSHA inspectors. Time frames in which equipment needs to meet the requirements of § 75.1909 or § 75.1910 would be specified in other paragraphs of this section.

Proposed paragraph (a) is based on an Advisory Committee recommendation that MSHA develop a time schedule to allow for conversion of outby equipment presently in use. The Committee recommended that the conversion be achieved by retrofits, replacement, or through the incorporation of additional safety features. The Committee also recommended that equipment newly introduced underground after an established date meet the new standards.

In establishing time frames incorporated in the section, the Agency has addressed the useful life of existing equipment. MSHA considered the availability of devices required to be added to existing equipment and the resources that would be necessary to perform retrofits. The Agency has not required existing equipment to be approved. Instead, the proposed standard has been structured to utilize the incorporation of additional features onto existing equipment to achieve the required level of protection. For example, certain outby equipment would be required to have a fire suppression system installed, and modifications made to brake systems, fuel systems, electrical systems, and other machine systems. Mine operators may determine whether the useful life of the equipment warrants the resource commitment.

Proposed paragraph (a)(1) would require that, effective immediately upon promulgation of the final rule, only diesel-powered equipment approved under 30 CFR part 7, subpart H or 30 CFR part 36 be used where permissible electric equipment is required. The technical requirements specified in part 36, and that MSHA expects would be specified in part 7, subpart H, are intended to ensure that the machine can be operated without creating a fire or explosion hazard. This paragraph follows the Advisory Committee recommendation that permissible diesel-powered equipment be required in areas of coal mines where permissible electric

equipment is required. These technical requirements would provide the same protections for diesel-powered equipment as are presently provided by permissible electric equipment. The primary hazards in these areas would be explosive concentrations of methane gas and combustible quantities of coal dust.

Proposed paragraph (a)(2) would establish a time schedule under which equipment approved under part 36 would be required to be provided with additional safety features. Paragraph (a)(2)(i) would require that, effective immediately upon promulgation of the final rule, power packages in such approved equipment would have a maximum surface temperature of less than 302 °F (150 °C). Under existing part 36, the maximum surface temperature of power package components is limited to 400 °F (204 °C).

The proposal would require that the diesel power packages in equipment approved under part 36 meet the same surface temperature requirement as equipment approved under part 7, subpart H and permissible electric equipment. To date, only one power package used in part 36 approved equipment has a surface temperature between 302 °F and 400 °F. MSHA is not aware of any power packages currently in use in underground coal mines which do not meet the proposed requirement. Consequently, MSHA believes that this requirement poses no hardship on the industry. The intent of the requirement is to ensure that power packages with surface temperatures above 302 °F are not subsequently introduced into underground coal mines.

Paragraph (a)(2)(ii) would require that all equipment approved under part 36 have a fire suppression system installed as of 6 months after the effective date of this section that meets the requirements of proposed § 75.1911. The Advisory Committee recommended that fire prevention features including surface temperature controls and fire suppression systems be installed on diesel-powered equipment used in outby areas. The fire suppression systems would be required in addition to surface temperature controls to address fire hazards created by other machine system malfunctions. Equipment approved under existing part 36 is of the same type as outby equipment referred to by the Advisory Committee and similar fire hazards are present. The Agency has determined that fire suppression systems should be installed to address these hazards.

MSHA believes that 6 months is an appropriate amount of time to install fire suppression systems. Fire suppression

systems that meet the requirements of proposed § 75.1911 are available and are presently installed on some diesel-powered mining equipment.

Approximately 451 units of part 36 approved equipment are in use in underground coal mines. A number of these units are already equipped with fire suppression systems which comply or can be easily made to comply with § 75.1911. MSHA expects that 1 to 3 worker-days would be necessary to install a system depending on machine size and fire suppression system complexity. Approximately 73 mines have from 1 to 5 diesel units and about 12 mines have from 6 to 10 units. In addition, about 5 mines have eleven to 20 units, and three mines have at least 30 units each.

Paragraph (a)(2)(iii) would require that equipment approved under existing part 36 have a particulate index and dilution air quantity determined in accordance with part 7, subpart E as of 24 months after the effective date of this section. This requirement would implement a number of Advisory Committee recommendations. The Committee recommended that a ventilation rate be established for each engine that would indicate the amount of air required to dilute CO, NO, or NO₂ to the 8-hour air quality standard level. The air quality standard level would be the current TLVs referred to in existing § 75.301-2 or as they may be revised in the future. Section 75.301-2 would be modified by the air quality standards currently under revision by MSHA. With that revision the values used for determining the dilution air quantity and allowable exposure levels would be the same.

The Committee further recommended that particulate emissions be evaluated and, based on that data, a particulate index be developed. The particulate index would be the quantity of air required to dilute the particulate emissions to one milligram per cubic meter of air.

Although the gaseous emissions of diesel engines used in equipment approved under existing part 36 are evaluated during the approval process, those tests are performed with 1.5 percent methane in the intake air instead of the 1.0 percent required by part 7, subpart E. Furthermore, the dilution air quantity computed under part 36 is based on allowable contaminant levels that are different than the values specified in § 75.301-2. It is expected that the dilution air quantity computed using part 7, subpart E procedures could be significantly

different than the dilution air quantity computed for existing part 36.

Six engine models manufactured by three companies constitute 90 percent of the engines currently in use in underground coal mines. The Agency believes that some of these engine models will be submitted for approval under these proposed regulations. Test data submitted as part of those applications will be considered applicable to existing engines. MSHA envisions developing programs to establish dilution air quantities and particulate indices for existing engines for which similar designs are not submitted for approval under these regulations.

Proposed paragraph (a)(3) of this section would establish a two-phase program in which additional features would be required to be incorporated into certain self-propelled and portable attended diesel-powered equipment used in outby areas of underground coal mines. Equipment approved under existing part 36 or proposed part 7, subpart H or I would already incorporate such features and not be subject to the requirements of this paragraph. Fire suppression systems, fire prevention features and equipment safety features would be required on all equipment in the first phase. During the second phase, surface temperature controls would be required on heavier duty equipment and approved engines would be required on all equipment.

Proposed paragraph (a)(3)(i) would require that all self-propelled and portable attended diesel-powered equipment meet the requirements of § 75.1909 as of 12 months after the effective date of this section. Section 75.1909 would require the incorporation of fire suppression systems, fire prevention features, and other equipment-related safety features. Although § 75.1909 would require the incorporation of an engine approved in accordance with proposed part 7, subpart E, the Agency has determined that such engines may not be available for all equipment within the 12 month time frame. Consequently, the Agency is proposing a longer period of time for the incorporation of such engines. This section would implement a number of Advisory Committee recommendations pertaining to outby equipment.

Proposed paragraph (a)(3)(ii) would require that self-propelled and portable attended diesel-powered equipment, except for equipment considered to be in the limited class of equipment as defined by proposed § 75.1908 would be required to have a power package approved in accordance with proposed part 7, subpart F or G and installed as of

24 months after the effective date of this section.

The requirements specified by this section are intended to ensure that the diesel machine can be operated without creating a fire hazard and that engine gaseous and particulate emissions are addressed. This section follows the Advisory Committee recommendation that diesel-powered equipment operating in areas of coal mines where permissible electric equipment is not required should be provided with fire prevention features including surface temperature controls and fire suppression systems. The primary hazard in these areas would be combustible quantities of coal dust.

Power packages approved in accordance with proposed part 7, subpart F or G would utilize approved engines. Such engines would be tested and evaluated to ensure that they are basically clean engines when properly adjusted and maintained. Dilution air quantities and particulate indices would be determined for these engines.

The Agency has determined that there are approximately 367 units of diesel-powered equipment located in approximately 56 mines that would be affected by this paragraph.

Proposed paragraph (a)(3)(iv) would establish procedures to be followed to obtain agency approval for the extended use of certain mine locomotives used in outby areas. Locomotives would be subject to § 75.1907(a)(3)(ii) which would require the use of an approved power package in 24 months. These locomotives would already be provided with fire suppression systems, fire protection features, and equipment safety features in accordance with proposed § 75.1907(a)(3)(i).

There are 64 locomotives located in 20 mines that are used for transportation of coal, supplies, and personnel. MSHA believes that suitable power packages approved under proposed part 7, subpart F or G may not be available for all of these locomotives as of 24 months after the effective date of this section. Some locomotives are used in mines with low seam heights. Power packages may not be available with a sufficiently low profile to be incorporated into these locomotives. Power packages approved under proposed part 7, subpart F or G will generally be longer than engines presently in use in many locomotives. Space may not be available to incorporate approved power packages in existing engine compartments. Gaining the necessary space by lengthening the engine compartment may change the locomotive wheelbase to the extent that the locomotive may be unable to negotiate turns in some mines.

This paragraph would establish a program that would allow the Agency to consider, on a case by case basis, whether suitable power packages are available. Upon application by the mine operator, MSHA's Director of Technical Support would conduct a study to identify and evaluate mine related factors, equipment considerations, and available approved power package designs. Depending upon the findings of the study, approval for the extended use of the locomotive may be granted. Such approval could include the incorporation of additional safety features, administrative procedures, and operating practices as necessary to achieve protection from fires and reduce miners' exposure to exhaust contamination. The Director of Technical Support would monitor power package designs as they are approved. If it were determined that an approved power package would be suitable for use in a locomotive for which extended use had been granted, the owner of that locomotive would be notified and a time frame established for installation of the power package.

Proposed paragraph (a)(4) would require that only new diesel-powered equipment approved under proposed part 7, subpart H or I, or the limited class of equipment which meets the requirements of proposed § 75.1909, or stationary unattended equipment which meets the requirements of proposed § 75.1910 can be introduced into underground coal mines. This provision would take effect 60 months after the effective date of this section.

Limited class equipment and stationary equipment do not require formal machine approval by the Agency. However, this equipment is required to utilize approved engines and stationary equipment would also be required to utilize approved power packages. These approval programs would be implemented under the provisions of 30 CFR part 7 which would accelerate the availability of these products.

Equipment required to be approved under proposed part 7, subpart H or I would also utilize approved engines and power packages. As discussed earlier, the final form of the administrative procedures for the approval of equipment has not been determined. Based on comments received from the advance notice of proposed rulemaking, MSHA would intend to develop administrative procedures that will make approved equipment available in a timely manner.

By establishing 60 months as the period of time after which only equipment approved under proposed

part 7, subpart H or I may be used, the Agency believes it will achieve two important goals. The mining equipment manufacturing industry will be able to focus its efforts on developing approved power packages for existing equipment and for future use in approved equipment. Sixty months will allow sufficient time to design, develop, and approve the variety of equipment types required by the mining industry.

The Agency has developed these time schedules based on what it believes will be the availability of the equipment. Based on MSHA's experience with other rules, and manufacturers' estimates of time needed to produce the equipment, the Agency believes that these time limits are reasonable. MSHA specifically solicits comments or other information on the practicability of these time frames.

Proposed paragraph (b) would establish diesel-powered ambulances and firefighting equipment as a special equipment class. Such equipment would be permitted for use underground without approval under proposed part 7 subpart H or I or existing part 36, and without meeting the requirements of proposed §§ 75.1908 and 1909. The use of such equipment would be subject to the existing requirements of § 75.1101-23. That section establishes requirements for the development of a specific firefighting and mine evacuation plan. The mine operator would include the proposed use of ambulances and firefighting equipment in the plan submitted to the District Manager as required by § 75.1101-23. Use of the equipment would be limited to emergency situations and drills as defined in the plan.

Proposed paragraph (c) would require that stationary unattended diesel-powered equipment comply with the requirements defined in proposed § 75.1910 as of 12 months after the effective date of this section. That section would provide for the installation of fire suppression systems; the incorporation of fire protection features; specific additional control requirements necessitated by unattended operation; and would establish requirements for stationary equipment installations. This paragraph would implement all of the Advisory Committee recommendations for the use of such equipment. The Agency does not believe that power packages approved under proposed part 7, subparts H or I would be available for all stationary equipment within 12 months of the effective date of this section and proposes to delay the requirement for such approved power packages.

Proposed paragraph (d) would require that all stationary diesel-powered equipment meet the requirements of proposed § 75.1910 including the utilization of an approved power package as of 24 months after the effective date of this section. This paragraph would fully implement the Advisory Committee recommendations for the use of stationary equipment.

Sections 75.1908 and 75.1909 Limited Class Equipment—Scope, Design and Performance Requirements. Proposed § 75.1908 would establish equipment characteristics to define a limited class of diesel-powered equipment. Proposed paragraph (a) would establish certain equipment characteristics that would implement Advisory Committee recommendations. Equipment as defined by this section would be light duty type rather than typical production equipment. Engines would not be turbocharged and would be limited to less than 90 horsepower. MSHA has determined that 90 percent of the equipment presently in use and considered to be light duty has engines of less than 90 horsepower.

Equipment utilizing turbocharged engines and hydraulic systems were specifically excluded from the limited class by the Committee recommendation. Hydraulic systems referred to in this paragraph are those systems which operate at relatively high pressures with large quantities of fluid. Such systems are presently used in articulated steering systems, hydraulic wheel units, and bucket lift cylinders. Automotive style power steering units and brake units are not considered hydraulic systems for purposes of this paragraph.

The Advisory Committee recommended that the potential fire hazards associated with diesel-powered equipment be addressed through fire prevention features that include the limitation of surface temperatures to prevent ignition of diesel fuel, hydraulic fluids, or accumulations of loose coal and coal dust. However, the Committee recognized the difficulties of obtaining equipment with surface temperature controls on small light duty equipment such as utility vehicles, personnel carriers, tractors, and ambulances which tend to utilize very low horsepower engines. Because of the duty cycle and relatively small horsepower, the fire hazards on this equipment are fewer than on heavy duty equipment. In addition, heavy duty equipment also has significant quantities of hydraulic fluids adding to the fire hazard.

Therefore, the Advisory Committee recommended that, rather than setting

requirements to prevent hot surface temperatures, fire protection features be required. These features include fire suppression devices, reduction of the potential for fuels to contact hot surfaces, and reduction of potential ignition sources. The Advisory Committee recommended that this equipment not be required to have a formal MSHA approval. The specific Advisory Committee recommendations for fire protection features are included in proposed § 75.1909.

Advisory Committee discussions suggested that equipment characteristics other than horsepower be considered in defining the light duty class. The Environmental Protection Agency (EPA) has utilized vehicle weight to establish classes of over the road trucks for purposes of regulating diesel engine emissions. Trucks that weigh less than 6,000 pounds are considered to be light duty by the EPA. MSHA has determined that most self-propelled diesel-powered mining equipment presently in use would be considered to be light duty equipment and weighs less than 6,000 pounds. The only portable equipment which would be considered as part of the limited class are air compressors and welders. This equipment would only be considered portable equipment if someone were in the immediate area to take action in the event of an equipment problem.

Proposed paragraph (b) would allow the use of altitude compensation devices. Although these devices operate on the same principle as turbochargers, the surface temperature of the engine components is no greater than normally aspirated engines permitted in the limited class. Altitude compensation devices allow engine performance to be maintained at high altitudes without adverse effects on emissions. Because improperly adjusted fuel injection rates can cause increased surface temperatures, the Agency would require the mine operator to certify that the engine fuel injection system is properly adjusted whenever the altitude compensation device is first installed or when maintenance or adjustments are made on the injection pump.

Proposed § 75.1909 would establish design and performance requirements to be met by limited class equipment. Compliance with these requirements would be determined by MSHA inspectors. The section would implement Advisory Committee recommendations that such equipment be provided with fire suppression systems and fire prevention features including fuel system protection, and an engine compartment air temperature

sensor with engine shutdown capability. Other equipment fire prevention features and safety features were specified by the Advisory Committee for both self-propelled and portable attended equipment and are included in this section. Limited class equipment would also be required to utilize an approved engine.

MSHA has determined that a parking brake would be adequate for limited class equipment and that an automatic emergency parking brake would not be necessary on this equipment. The Agency has determined that there is no fatality accident history to support the addition of such a requirement. MSHA believes that limited class equipment is primarily used for transportation or as light duty equipment. The potential hazard of an unexpected stop on a limited class piece of equipment with passengers on board does not justify the use of an automatic emergency parking brake on this type of equipment.

Paragraph (a)(1) would require the use of an approved engine to provide protection from the exhaust. The approval would include evaluation of diesel particulate through determination of the particulate index. Paragraph (a)(2) would require a fire suppression system to put out a fire should fuels come in contact with hot surfaces or be ignited by a faulty electrical system.

Hazards associated with the fuel tank and fuel lines are addressed by paragraph (a)(3). These precautions include venting the fuel tank to prevent spillage or blow out of fuels and routing of the fuel lines to prevent leakage of fuel on hot surfaces of the engine or exhaust.

Proposed paragraphs (a) (4) and (5) address the installation of sensors in the engine cooling system and in the engine compartment. These safety features would detect an overheating engine and would sense a fire in the engine compartment and give warning to the operator of this equipment. While these features do not eliminate the hazards of hot surface temperatures, MSHA believes that proposed precautions would provide adequate protection because of the light duty cycles of this equipment.

Electrical systems frequently have caused fires on diesel equipment. Paragraph (a)(6) addresses the hazards associated with the electrical systems on this equipment. These requirements are consistent with other MSHA electrical standards but are tailored for this type of diesel equipment.

Sections 75.1911 and 75.1912 Fire Suppression Systems. Proposed § 75.1911 would establish requirements for fire suppression systems on mobile

diesel-powered equipment and fuel transportation units. These requirements would be applicable to approved equipment, limited class equipment, and to fuel transportation units, both self-propelled and towed. Proposed § 75.1912 would establish requirements for fire suppression systems to be installed at diesel fuel storage areas and stationary diesel-powered equipment sites.

These requirements would implement a number of Advisory Committee recommendations regarding fire suppression systems. The recommendations were directed towards specific applications such as limited class equipment or stationary equipment.

The standards would require that only fire suppression systems listed or approved by a nationally recognized independent testing laboratory be used. The requirements would include design features, installation requirements, and inspection, testing and recordkeeping requirements.

Starting Aids. The Committee addressed the use of cold starting aids and recommended that the MSHA proposal should indicate requirements for the storage and use of cold starting aids. Normally, ether is used to assist starting of diesel engines in cold weather. The MSHA proposal addresses volatile starting aids to provide protection from fire and explosion hazards associated with the use of these substances. The proposal includes the prohibition of such substances in the presence of 1.0 percent or more of methane since permissible equipment may not prevent a flashback of fire which could ignite a methane atmosphere.

Maintenance of Diesel-Powered Equipment. The Committee recommended that diesel equipment be examined on the same basis as electric equipment and that the checklist developed during the approval process under proposed part 7, subparts E through G and subparts H and I of the advance notice of proposed rulemaking be used as part of this evaluation. They also recommended that equipment be maintained in approved condition and that filters and scrubber water be changed on a regular basis.

Proposed § 75.1914 specifies the requirements for maintaining equipment in safe and approved condition, changing filters when dirty or the intake pressure device so indicates, weekly examination of approved safety features and the certification of required examinations. The proposal would also require that maintenance and repair of approved features be made only by persons qualified in accordance with

proposed § 75.1915. This would not include maintenance such as flushing water scrubbers or changing air filters.

The proposal would require that the water scrubber system be drained and flushed at least once on each shift that diesel-powered equipment is operated. Scrubber maintenance problems, frequency and modes of failure were identified and reported by the Bureau of Mines Report of Investigations "Failure Analysis of Diesel Exhaust-Gas Water Scrubbers" (RI 8682). In this study, the Bureau of Mines contacted 29 mine maintenance departments and equipment manufacturers concerning service experience and construction of water scrubbers on mobile diesel-powered equipment. Because these scrubbers cool exhaust gas and act as flame arresters, their failure would compromise safety in underground mines. In this study, mine water and scrubber water solution samples were also analyzed chemically to determine their corrosive properties.

In order to properly act as a flame arrester and adequately cool the exhaust gases, minimum water levels in scrubbers are usually ensured by float devices connected to a reservoir or a low water shutdown device. Scrubbers are designed to maintain enough water for an 8 hour shift operation at a one-third load factor. This ensures against any flame propagation caused by engine backfire or discharge of incandescent particles into a gassy atmosphere. If a scrubber fails to maintain the necessary water level while in operation, built-in devices detect the low water level and shut down the engine in a fail-safe manner. Due to the harsh mining environment, it is not uncommon for these devices to become inoperable on mine equipment. Adherence to rigid flushing and cleaning schedules is critical since solid particles and sludge are trapped in the scrubber. If allowed to remain, these materials will accumulate and eventually block internal passages of the scrubber. As a result, scrubber effectiveness as an exhaust-gas cooler and a flame arrester becomes impaired. Furthermore, once permitted to accumulate in the scrubber and safety shutdown floats, this material cannot be removed by subsequent flushing. Therefore, this material must be prevented from accumulating in order to provide adequate safety. The proposal would require maintenance of scrubbers at least once each shift to remove material accumulation. This maintenance would be normally performed as part of refilling the scrubber with water.

This proposal would also require the testing and evaluation of the undiluted exhaust on a weekly basis as part of the mine's maintenance program. This provision is based on the Committee's recommendation for conducting such tests and should provide a health benefit to miners.

Sections 75.1915 and 75.1916 Qualifications and Training of Diesel Mechanics. The Committee recommended that MSHA require that persons performing maintenance on approved features of diesel-powered equipment be trained and tested for competency and that such training and testing be approved by MSHA. This recommendation addresses concerns that maintenance is a vital step in ensuring safe and healthful use of diesel equipment, and therefore only trained persons should be permitted to work on diesel equipment to be used underground.

Proposed § 75.1915 would address the training, testing and qualification requirements for diesel mechanics performing work on approved features of diesel-powered equipment. The requirements would include a demonstration of competency through a test approved by MSHA and administered by the mine operator. It would also require annual retraining and include a provision for revocation of a diesel mechanic's qualifications for cause. Following the Committee recommendation, MSHA would approve the program developed by the operator, including the qualification test. Each program would be individually geared to the different equipment types at a particular mine and the machine specific methods of testing, evaluating, and repairing the various features of the equipment. The MSHA-approved checklist would be used for the specific equipment at each individual mine site to ensure that testing was appropriate for the various types of equipment in use. Proposed § 75.1916 addresses the procedures for developing and administering training and retraining programs for diesel mechanics.

Operating Speeds of Diesel-Powered Equipment (Section 75.1917). Proposed § 75.1917 addresses roadway conditions, operator control of diesel-powered equipment and traffic rules including standardizing warning signs. This proposal is based on the Committee recommendation which recognized the mine related conditions that affect the operation of diesel equipment.

III. Drafting Information

The principal persons responsible for preparing these proposed rules are Peter M. Turcic, George J. Dvorznak, Steve

Engleman, and Steve Gigliotti, Office of Technical Support; Jerry O. D. Lemon, Coal Mine Safety and Health; Tony Turyn, Office of Standards, Regulations and Variances; and Heidi W. Strassler, Office of the Solicitor, Department of Labor.

IV. Executive Order 12291 and Regulatory Flexibility Act

A. Summary of Costs and Benefits

The Mine Safety and Health Administration (MSHA) is proposing standards and regulations for diesel-powered equipment in underground coal mines. These standards address the approval of diesel-powered equipment, the safe use of the equipment, and the protection of miners' health.

Executive Order 12291 requires that a regulatory impact analysis be performed for any regulations that would have a major impact on the economy. MSHA has determined that these standards and regulations would not result in major cost increases nor have a major effect of \$100 million or more on the economy.

MSHA data shows that this rulemaking will affect approximately 13,100 employees at 116 underground coal mines. About 89 large mines and 27 small mines (of which 20 were operating during the past year) will be affected.

Diesel-powered equipment has been used for many years in underground metal and nonmetal mines and has been increasingly used in coal mines during the past 10 years. The use of diesel-powered equipment in underground coal mines has increased from 175 units in 30 mines in 1977 to over 1,500 units in about 120 mines in September 1989. Given the current state of the industry and assuming no change in existing regulations, about 2,720 pieces of diesel-powered equipment may be used in about 220 mines by the year 2000.

The benefits of the proposed rule are the fatalities, injuries, and illnesses that would be prevented at these underground coal mines. These benefits can be divided between those injuries and fatalities resulting from fires and other sources, and illnesses and deaths resulting from various respiratory effects including lung cancer. The primary safety hazards associated with the use of diesel-powered equipment are fires and explosions. Although there have been fires involving diesel-powered equipment in surface and underground coal and metal and nonmetal mines, there have been few in underground coal mines. MSHA believes that diesel-powered equipment usage is increasing and the resulting likelihood of fires related to diesel-powered equipment is increasing. Other types of accidents that

can be reduced may result from heat, noise, and operating speeds. The Agency believes that increased benefits will result after promulgation of these rules. Finally, there exist a potential hazards to employee health resulting from the exhaust of diesel-powered equipment in underground coal mines. These include respiratory impairment, the increased risk of lung cancer and other adverse health effects such as increased susceptibility to airway infection. The promulgation of these proposed rules will reduce these adverse health effects.

Lack of data prevents MSHA from conducting a quantitative benefits analysis of the hazardous health effects associated with exposure to diesel emissions. MSHA requests data to determine current exposure levels by job category, number of workers exposed, and the risk associated with each exposure level. Data is also lacking to calculate the potential benefits resulting from improved safety. MSHA requests data to determine the potential benefits resulting from improved safety and the use of diesel-powered equipment.

The compliance costs associated with the proposed standards directly impact two industry groups: manufacturers of diesel-powered mining equipment and operators of underground coal mines. The total annual and annualized cost for equipment manufacturers is about \$267,000. Most, if not all, of this compliance cost, however, will be passed on to purchasers in the form of increased equipment costs.

The total initial cost for underground coal mines is about \$2,110,300 or about \$18,300 per mine. About \$278,900 or over 13 percent of this initial cost is incurred by small mines. The average initial cost is \$10,300 per small mine and \$20,600 per large mine. The total annual operating and annualized cost is about \$8,233,400 or about \$71,000 per mine. About \$141,300 or less than 2 percent of the annual cost is incurred by small mines. The annual compliance cost is about \$5,200 per small mine and \$91,000 per large mine.

The mine operator's choice to use diesel-powered equipment, therefore, reflects a consideration of compliance costs as they relate to increased productivity resulting from using diesel-powered equipment. MSHA concludes that the proposed rule will not present a significant economic impact on underground coal mines.

Under the Regulatory Flexibility Act of 1980, MSHA has analyzed the impact of the proposal upon small businesses. Several standards impact small mines

disproportionately because they contain the same requirements irrespective of the numbers of pieces of diesel-powered equipment in use at the mine. The most costly standards, however, impose costs in direct proportion to the number of pieces of equipment affected. MSHA preliminarily determines that the proposed standards and regulations for diesel-powered equipment in underground coal mines will not have a significant adverse impact upon a substantial number of small coal mines.

B. Request for Additional Information

MSHA requests additional information to form a better basis for its final regulatory impact analysis. All information received will be carefully evaluated in developing the final rule. Of particular interest to MSHA is information concerning the following:

1. How many cases of worker illness due to diesel exhaust exposures have been reported at your mine? What types of illnesses? What were the circumstances of exposure? What steps were taken to lower the exposure?

2. What is being done to measure exposure to diesel exhaust? What kind of equipment is used to determine worker exposure? How often are measurements taken?

3. What are your current exposure levels of diesel exhaust by job category? How many workers are exposed? How often do exposures occur (hourly, daily, weekly)? What is the duration of these exposures (hours per day, days per week)?

4. What measures are being taken to reduce general worker exposures to diesel exhaust?

5. How many incidents of worker injury unique to diesel equipment (for example, unsafe operating speeds, noise, burns from fuel) have occurred in your mine? What types of diesel equipment have been associated with these incidents? How many pieces of diesel equipment are used in your mine?

6. What would be the impact of the engineering controls identified in the proposed rule? What would be the quantitative effect of these controls upon the productivity of diesel equipment? What would be the quantitative effect of the work practices required in the proposed rule upon the productivity of diesel equipment? If possible, provide estimates by general type of equipment.

V. Paperwork Reduction Act

The proposed rule contains information collection requirements in §§ 70.1900 (a), (b), and (d); 70.1900(a)(1); 70.1901(g); 75.390(b); 75.1907(a)(3)(iv); 75.1911 (i), (j), and (k) and 75.1912 (g),

(h), and (i); 75.1914(d); 75.1915 and 75.1916; and part 7, subparts E, F, and G. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act of 1980.

The respondents in each of the paperwork provisions would be mine operators. Each of the following public reporting burden hour estimates includes the time for reviewing instructions, gathering and maintaining the data needed, and completing the review of the collection information. The resultant information collection would be used by MSHA to assess compliance with the proposed requirements.

Exposure monitoring records. These records are necessary for the mine operator to assess exposure trends and whether the exposures are below the permissible limits. Recording and reviewing the weekly data would alert operators and MSHA to exposure and equipment problems. The public reporting burden for this collection of information is estimated to average 3 minutes per weekly sample of the average 7 splits per large mine and 2 splits per small mine for a total annual burden of 5,281 hours.

Statement of low sulfur content in diesel fuel. These records are necessary in order for mine operators to justify to MSHA that it is unnecessary to test for potential sulfur dioxide emissions because the sulfur content of the diesel fuel is less than 0.25 percent. The public reporting burden for this collection of information is estimated to be zero hours because it will be less costly for operators to use high sulfur fuel and perform air monitoring than for operators to pay the low sulfur fuel premium and to pay the costs of obtaining such certification from the fuel supplier.

Personal exposure monitoring records. These records are necessary in order for the mine operator to determine which employees have been exposed above the permissible exposure limits and the extent of the potential overexposure. Recording the data and informing the employee would alert both mine operators and employees to the exposure problem. The public reporting burden for this collection of information is estimated to be zero hours because compliance with the proposed requirements for engineering controls and work practices will ensure that personal exposure monitoring will not be necessary.

Mine ventilation plan records. These records are necessary in order for MSHA to determine whether the required mine ventilation plan is

sufficient to ensure acceptable air quantity. The public reporting burden for this collection of information is estimated to be negligible because listing the air quantity requirements of diesel-powered equipment would add little time to the ventilation plan submission. Any future modifications of the ventilation plan due to the addition of diesel-powered equipment would be performed as part of the routine biannual ventilation plan submission and would not require an additional application.

Approval for locomotive use. These records are necessary in order for MSHA to ensure that the use of locomotives that do not have approved power packages would be limited until such time as approved power packages suitable for mine conditions and locomotive design are available. The public reporting burden for this collection of information is estimated to be negligible because there are relatively few locomotives that do not have approved power packages.

Fire suppression system inspection. These records are necessary in order for the mine operators to ensure that the systems are examined routinely and, thus, kept in operating order. The mine operator would use this weekly record to determine if needed repairs were conducted. The public reporting burden for this collection of information is estimated to average 20 minutes per weekly inspection and test of each of the 1,439 pieces of diesel-powered equipment for a total annual burden of 24,943 hours. The public reporting burden is also estimated to average 20 minutes per weekly inspection and test of each of the 319 diesel-fuel storage areas for a total annual burden of 5,529 hours.

Development of standard operating procedures for evaluating exhaust emissions. These written procedures are necessary in order for MSHA to ensure that the procedures used to measure diesel exhaust emissions are valid. The public reporting burden for this collection of information would be a one-time effort of 4 hours for each type of diesel-powered equipment found in this mine. At an average of 2 types of equipment in the 27 small mines and 3 types of equipment in the 89 large mines, the total one-time burden hours would be 1,284 hours.

Testing and evaluating exhaust emissions. These records are necessary in order for the mine operator to ensure that the equipment exhaust continues to meet the required air quality. Recording and reviewing the weekly data would alert operators when the equipment's

emissions are deteriorating, thus signifying a need for equipment maintenance or repair. The public reporting burden for this collection of information is estimated to average 20 minutes per week for each of the 1,439 pieces of diesel-powered equipment. The total annual burden hours would be 24,943 hours.

Underground diesel mechanic certification. These records are necessary in order to ensure that only appropriately trained and certified diesel mechanics are allowed to maintain and repair diesel-powered equipment in underground coal mines. The average public reporting burden for this collection of information would be: 2 hours to develop the examination; 9 hours to prepare and submit for approval a training program; 5 hours to prepare and submit for approval a retraining program; 4 hours at small mines and 6 hours at large mines to administer the examination; 10 hours of initial training (5 for the instructor and 5 for the trainee) for each type of equipment upon which the mechanic may work; and 5 hours of retraining (2.5 for the instructor and 2.5 for the trainee) for each type of equipment upon which the mechanic may work. The total first-year burden would be 19,080 hours and the annual burden would be 10,242 hours.

MSHA approvals of engines and power packages. These applications are necessary for MSHA to ensure that only approved nonpermissible engines and power packages are used on diesel-powered equipment. The public reporting burden for this collection of information is estimated to average 4 hours per application. At 33 existing engines and 113 existing power packages, the first-year initial burden hours would be 584 hours. At 6 new engines and 15 new power packages every year, the total annual burden hours would be 84 hours.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances; MSHA, Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for MSHA.

VI. Executive Order 12612

The Agency has reviewed the final rule in accordance with Executive Order 12612 regarding federalism and has determined that the rule does not have

sufficient federalism implications to warrant the preparation of a Federalism Assessment under this Executive Order.

List of Subjects in 30 CFR Parts 7, 70, 75

Mine safety and health, Underground coal mines, Diesel-powered equipment.

Accordingly, it is proposed to amend chapter I of title 30, Code of Federal Regulations as set forth below.

Dated: September 26, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

PART 7—[AMENDED]

A. It is proposed to amend 30 CFR part 7 as follows:

1. The authority citation for part 7 continues to read as follows:

Authority: 30 U.S.C. 957.

2. New subparts E, F, G are added to part 7 to read as follows:

* * * * *

Subpart E—Diesel Engines Intended for Use in Underground Coal Mines.

Sec.

7.81 Purpose and effective date.

7.82 Definitions.

7.83 Application requirements.

7.84 Technical requirements.

7.85 Critical characteristics.

7.86 Test equipment and specifications.

7.87 Test for determination of maximum fuel-air ratio.

7.88 Test for determination of ventilation rate.

7.89 Test for determination of particulate index.

7.90 Approval marking.

7.91 Post-approval product audit.

7.92 New technology.

Subpart F—Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment is Required.

7.95 Purpose and effective date.

7.96 Definitions.

7.97 Application requirements.

7.98 Technical requirements.

7.99 Critical characteristics.

7.100 Explosion tests.

7.101 Surface temperature tests.

7.102 Exhaust gas cooling efficiency test.

7.103 Safety system control tests.

7.104 Internal static pressure test.

7.105 Approval marking.

7.106 Post-approval product audit.

7.107 New technology.

7.108 Power package checklist.

Subpart G—Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment is Not Required.

7.111 Purpose and effective date.

7.112 Definitions.

7.113 Application requirements.

7.114 Technical requirements.

7.115 Critical characteristics.

7.116 Surface temperature tests.

7.117 Exhaust gas cooling efficiency tests.

7.118 Safety system control tests.

7.119 Approval marking.

7.120 Post-approval product audit.

7.121 New technology.

7.122 Power package checklist.

Subpart E—Diesel Engines Intended for Use in Underground Coal Mines.

§ 7.81 Purpose and effective date.

This subpart establishes the specific engine performance and exhaust emission requirements for MSHA approval of diesel engines for use in areas of underground coal mines where permissible electric equipment is required and areas where non-permissible electric equipment is allowed. Any engine approved under this subpart may be incorporated with a power package which shall meet the appropriate requirements of subpart F or G of this part. It is effective [60 days after date of final publication in the Federal Register].

§ 7.82 Definitions.

The following definitions apply in this subpart.

Category A engines. Diesel engines intended for use in areas of underground coal mines where permissible electric equipment is required.

Category B engines. Diesel engines intended for use in areas of underground coal mines where nonpermissible electric equipment is permitted.

Corrosion-resistant material. Material that has at least the corrosion-resistant properties of type 304 stainless steel.

Diesel engine. Any compression ignition internal combustion engine using the basic diesel cycle where combustion results from the spraying of fuel into air heated by compression.

Diesel particulate matter (part). Any material, with the exception of water, which is collected on a filter passed by an air diluted exhaust stream.

Exhaust emission. Any substance emitted to the atmosphere from the exhaust port of the combustion chamber of a diesel engine.

Intermediate speed. Peak torque speed as specified by the manufacturer or 60 percent of rated speed, whichever is higher.

Peak torque speed. The speed at which an engine develops maximum torque.

Percent load. The fraction of the maximum available torque at an engine speed.

Rated horsepower (HP). The maximum horsepower output of a diesel engine as stated by the manufacturer.

Rated speed. The engine speed at which the rated HP is obtained.

Steady-state condition. Diesel engine operating condition which is at a constant speed and load and at stabilized temperatures and pressures.

Total oxides of nitrogen (NO_x). The sum total of the measured parts per millions (ppm) of nitric oxide (NO) plus the measured ppm of nitrogen dioxide (NO₂).

§ 7.83 Application requirements.

(a) An application for approval of a diesel engine shall contain sufficient information to document compliance with the technical requirements of this subpart and specify whether the application is for a category A engine or category B engine.

(b) The application shall include the following engine specifications:

- (1) Model number.
- (2) Number of cylinders, cylinder bore diameter, piston stroke, engine displacement.
- (3) Maximum intake vacuum and exhaust backpressure.
- (4) Rated speeds, rated horsepower at rated speeds, peak torque speed, maximum rated torque, high idle, minimum permitted engine speed at full load, low idle.
- (5) Fuel consumption at rated horsepower and at the maximum rated torque.

(6) Performance specifications of turbocharger, if applicable.

(c) The application shall include drawings of the following components specifying all details affecting the technical requirements of this subpart. Composite drawings specifying the required construction details may be submitted instead of individual drawings:

- (1) Cylinder head.
 - (2) Piston.
 - (3) Inlet valve.
 - (4) Exhaust valve.
 - (5) Cam shaft—profile.
 - (6) Fuel cam shaft, if applicable.
 - (7) Injector body.
 - (8) Injector nozzle.
 - (9) Injection fuel pump.
 - (10) Governor.
 - (11) Turbocharger—water-cooled, if applicable.
 - (12) Aftercooler, if applicable.
 - (13) Valve guide.
 - (14) Intake manifold.
 - (15) Water-cooled exhaust manifold, if applicable.
 - (16) Cylinder head gasket.
 - (17) Precombustion chamber, if applicable.
- (d) The application shall include a drawing showing the general arrangement of the engine.

(e) All drawings shall be titled, dated, numbered, and include the latest revision number.

(f) When all necessary testing has been completed, the following information shall be submitted:

- (1) The gaseous ventilation rate for the rated speed and horsepower.
- (2) The particulate index for each rated speed and horsepower.
- (3) A fuel deration chart for altitudes for each rated speed and horsepower.

§ 7.84 Technical requirements.

(a) **Fuel injection adjustment.** The fuel injection system of the engine shall be constructed so that the quantity of fuel injected can be controlled at a desired maximum value. This adjustment shall be changeable only after breaking a seal or by altering the design.

(b) **Maximum fuel-air ratio.** At the maximum fuel-air ratio determined by § 7.87 of this subpart, the concentrations (by volume, dry basis) of carbon monoxide (CO) and oxides of nitrogen (NO_x) in the undiluted exhaust gas shall not exceed the following:

- (1) For category A engines: CO no more than 0.30 percent; NO_x no more than 0.20 percent.
- (2) For category B engines: CO no more than 0.25 percent; NO_x no more than 0.20 percent.

(c) **Gaseous emissions ventilation rate.** For each rated speed and horsepower requested, the ventilation rate necessary to dilute gaseous exhaust emissions to the following permissible exposure levels shall be determined under § 7.88 of this subpart: TWA_{CO}; TWA_{CO}; TWA_{NO}; TWA_{NO2}. Each rate shall be determined using the maximum f/a ratio established by paragraph (b) of this section.

(d) **Fuel deration.** The fuel rates specified in the fuel deration chart shall be based on the tests conducted under paragraphs (b) and (c) of this section and shall ensure that the maximum f/a ratio determined under paragraph (b) is not exceeded at the altitudes specified in the fuel deration chart.

(e) **Particulate index.** For each rated speed and horsepower requested, the particulate index necessary to dilute the exhaust particulate emissions to 1 mg./m³ shall be determined under § 7.89 of this subpart.

§ 7.85 Critical characteristics.

The following critical characteristics shall be inspected or tested on each diesel engine to which an approval marking is affixed:

- (a) Fuel rate is set to altitude.
- (b) Fuel injection pump adjustment is sealed, if applicable.

§ 7.86 Test equipment and specifications.

The principal components of a dynamometer test cell and emissions sampling system to test for determination of maximum f/a ratio, ventilation rates, and the particulate index shall be as follows:

(a) **Dynamometer test cell.** (1) An apparatus for measuring torque shall be provided and accurate to ±0.5 percent of the indicated full load reading.

(2) An apparatus for measuring revolutions per minute (rpm) shall be provided and accurate to ±0.5 percent of the indicated rpm reading.

(3) An apparatus for measuring temperatures shall be provided and accurate to ±0.75 percent of the indicated reading.

(4) An apparatus for measuring pressure shall be provided and accurate to ±3 percent of the indicated reading.

(5) An apparatus for measuring fuel flow shall be provided and accurate to ±1 percent of full scale reading. An accuracy of ±2 percent of full scale reading is permitted at an idle power point.

(6) An apparatus for measuring the inlet air flow rate of the diesel engine shall be provided and accurate to ±2 percent of the indicated reading.

(7) For testing category A engines, an apparatus for metering in 1.0±0.1 percent, by volume, of methane (CH₄) into the intake air system shall be provided.

(8) The test fuel shall be a low volatile hydrocarbon fuel classified as ASTM D975, No. 2D, diesel fuel and which has a flash point of 125 °F (52 °C) or greater at standard temperature and pressure. The sulfur content shall be a minimum of 0.25 percent, by weight. The test fuel temperature at the inlet to the diesel engine's fuel injection pump shall be controlled to 104 °F ±5 °F (40 °C ±3 °C).

(9) The engine coolant outlet temperature (if applicable) shall be controlled to within ±5 °F (3 °C) of the nominal thermostat value specified by the manufacturer.

(b) **Gaseous emission sampling system.** (1) A schematic of the gaseous sampling system which is to be used for testing category A engines under this subpart is shown in Figure E-1. Since other sampling or analytical systems can produce equivalent results, exact conformance with Figure E-1 is not required. The following list of components is shown:

- (i) Filters—F1, F2, F3, and F4.
- (ii) Flowmeters—FL1, FL2, FL3, FL4, FL5, FL6, and FL7.
- (iii) Upstream Gauges—G1, G2, and G5.

(iv) Downstream Gauges—G3, G4, and G6.

(v) Pressure Gauges—P1, P2, P3, P4, P5, and P6.

(vi) Water traps WT1 and WT2 shall remove water from the sample by condensation. The sample gas temperature within the water trap shall

be monitored and shall not exceed 45 °F (7 °C). Chemical dryers are not an acceptable method of removing the water.

(vii) Regulators—R1, R2, R3, R4, R5, R6, and R7.

(viii) Selector Valves—V1, V2, V3, V4, V6, V7, V8, V15, and V19.

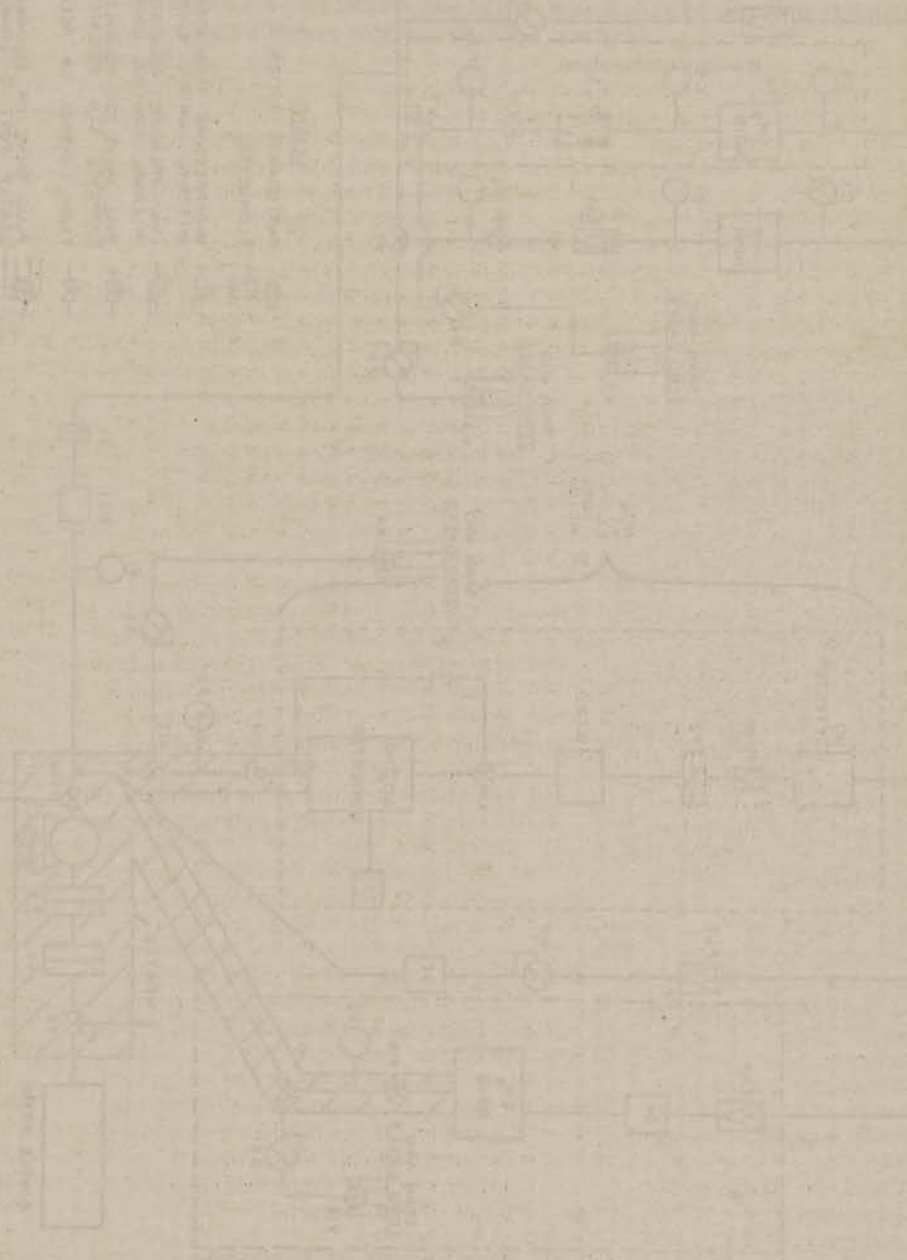
(ix) Heated Selector Valves—V5, V13, V16, and V17.

(x) Flow Control Valves—V9, V10, V11, and V12.

(xi) Heated Flow Control Valves—V14 and V18.

(xii) Pump—Sample Transfer Pump.

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(xiii) Temperature Sensor—(T1).

(xiv) Dryer—D1 and D2.

(2) A schematic of the gaseous sampling system which is to be used for testing category B engines under this subpart is shown in Figure E-2. Since other sampling or analytical systems can produce equivalent results, exact conformance with Figure E-2 is not required. The following list of components is shown:

(i) Filters, F1, F2, F3, and F4.

(ii) Flowmeters—FL1, FL2, FL3, and FL4.

(iii) Upstream Gauges—G1, and G2.

(iv) Downstream Gauges—G3, and G4.

(v) Pressure Gauges—P1, P2, P3, and P4.

(vi) Water traps WT1 and WT2 shall remove water from the sample by condensation. The sample gas temperature within the water trap shall be monitored and shall not exceed 45 °F (7 °C). Chemical dryers are not an acceptable method of removing the water.

(vii) Regulators—R1, R2, R3, and R4.

(viii) Selector Valves—V1, V2, V3, V4, V6, and V7.

(ix) Heated Selector Valves—V5, V8, and V12.

(x) Flow Control Valves—V9, V10, V11.

(xi) Heated Flow Control Valves—V13.

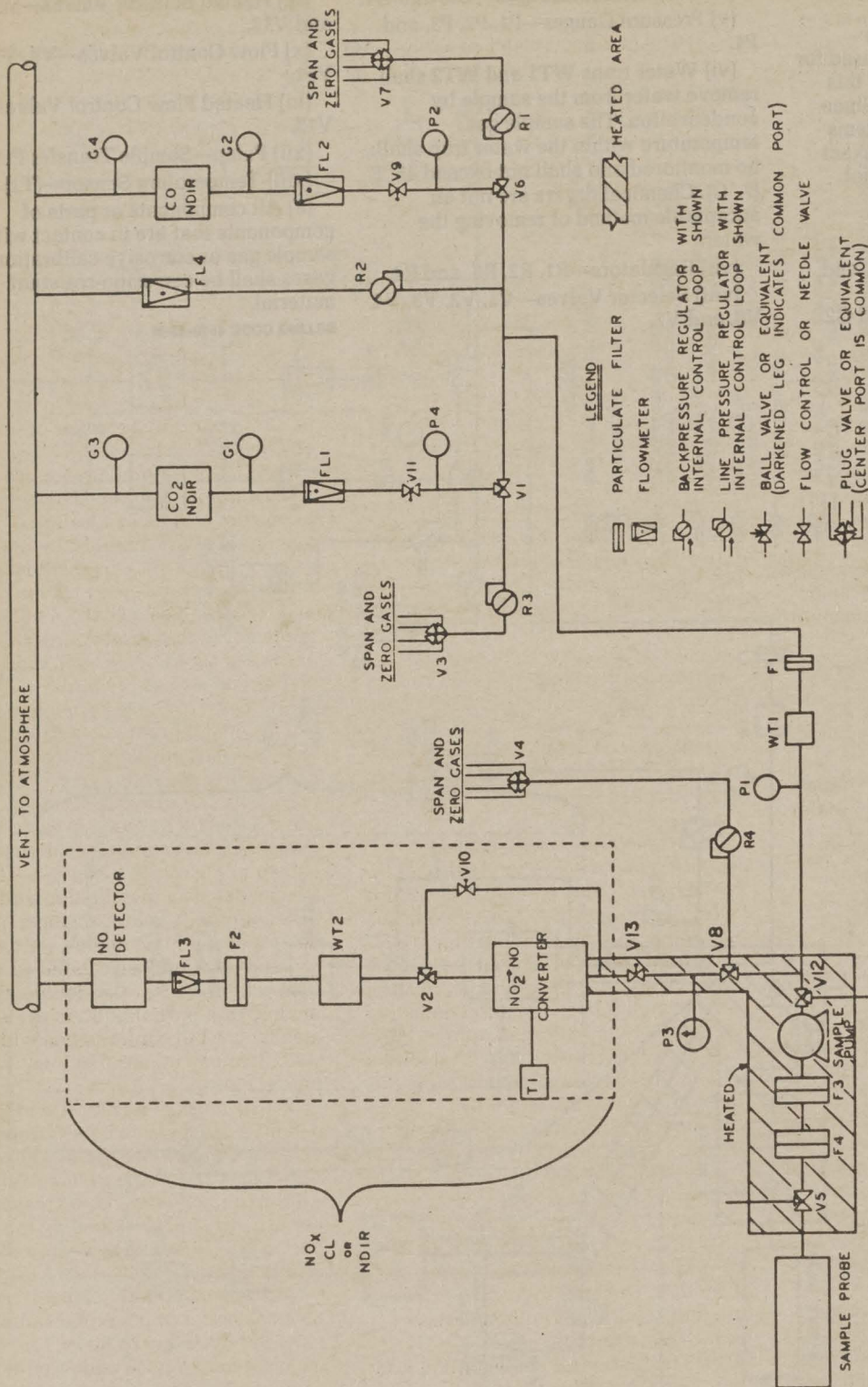
(xii) Pump—Sample Transfer Pump.

(xiii) Temperature Sensor—(T1).

(3) All components or parts of components that are in contact with the sample gas or corrosive calibration gases shall be corrosion-resistant material.

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FIG. E-2 EXHAUST GAS SAMPLING AND ANALYTICAL TRAIN-CATEGORY B ENGINES

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(4) All analyzers shall obtain the sample to be analyzed from the same sample probe.

(5) CO and CO₂ measurements shall be made on a dry basis.

(6) Calibration or span gases for the NO_x measurement system shall pass through the NO₂ to NO converter.

(7) The sample probe shall be straight, closed-end, multiholed, and shall be placed inside the exhaust pipe. The probe length shall be at least 80 percent of the diameter of the pipe. The total open area of the sampling holes shall not exceed the total cross-sectional area of the probe. The angular spacing of any 2 holes around the same circumference shall not be 160° to 200°.

(8) The sample probe shall be located in the exhaust pipe at a distance of 3-10 feet (1-3 meters) from the exhaust manifold outlet flange or the outlet of the turbocharger.

(9) Within 20 seconds after introduction of span gases at the sample probe or valve V5, all analyzers shall respond with a reading of 90 percent of the span gas concentration.

(10) *General analyzer specifications.*

(i) The analyzer shall respond to an instantaneous change at the entrance to the analyzer with a response equal to 95 percent of that change in 6.0 seconds or less on all analyzer ranges. The change shall be at least 60 percent of full scale reading for the analysis range.

(ii) The precision of the analyzer shall be ± 1 percent or less of full scale readings for each range used. The precision is defined as 2.5 times the standard deviations of 10 repetitive responses to a given calibration or span gas.

(iii) The analyzer peak to peak response to zero and calibration of span gases over any 10 second period shall not exceed 2 percent of full scale reading within the analysis range.

(iv) The analyzer zero-response drift during a 1-hour period shall be less than 2 percent of full scale reading on the lowest range used. The zero-response is defined as the mean response including noise to a zero gas during a 30-second time interval.

(v) The analyzer span drift during a 1-hour period shall be less than 2 percent of full scale reading on the lowest range used. The analyzer span is defined as the difference between the span response and the zero response. The span response is defined as the mean response including noise to a span gas during a 30 second time interval.

(11) *CO and CO₂ analyzer specifications.* (i) Measurements shall

be made with nondispersive infrared (NDIR) analyzers.

(ii) The minimum water rejection ratio (maximum H₂O interference) shall be as follows:

(A) For CO analyzers: 1000:1.

(B) For CO₂ analyzers: 100:1.

(iii) The minimum CO₂ rejection ratio (maximum CO₂ interference) for CO analyzers shall be 5000:1.

(12) When NO_x analyzer specifications use a chemiluminescence (CL) analyzer the following shall apply:

(i) From the sample point to the NO₂ to NO converter, the NO_x sample shall be maintained between 203 °F (95 °C) and 446 °F (230 °C).

(ii) For high vacuum CL analyzers with heated capillary modules, supplying a heated sample from the probe to the capillary module is sufficient.

(iii) The NO₂ to NO converter efficiency shall be at least 90 percent.

(iv) The quench interference must be less than 3.0 percent.

(13) When NO_x analyzer specifications use an NDIR analyzer system the following shall apply:

(i) The system shall include a NO₂ to NO converter, a water trap, and a NDIR analyzer.

(ii) From the sample point to the NO₂ to NO converter, the NO_x sample shall be maintained between 203 °F (95 °C) and 446 °F (230 °C).

(iii) The minimum water rejection ratio (maximum water interference) for the NO_x NDIR analyzer shall be 5000:1.

(iv) The minimum CO₂ rejection ratio (maximum CO₂ interference) for the NO_x NDIR analyzer shall be 30,000:1.

(14) When CH₄ analyzer specifications use a heated flame ionization detector (HFID) the following shall apply:

(i) The analyzer shall be fitted with a constant temperature oven housing the detector and sample-handling components. The detector, oven, and sample-handling components within the oven shall be suitable for continuous operation at temperatures from 347 °F (175 °C) to 392 °F (200 °C) ± 4 °F (2 °C).

(ii) The analyzer fuel shall contain 40 ± 2 percent hydrogen. The balance shall be helium. The mixture shall contain less than 2 parts per million carbon (ppmC) hydrocarbon.

(iii) The burner air shall contain less than 2 ppmC hydrocarbon.

(iv) The percent of oxygen interference shall be less than 3 percent.

(15) An NDIR analyzer for measuring CH₄ may be used in place of the HFID specified in paragraph (b)(14) of this section and shall conform to the requirements of § 7.86(b)(10) of this

subpart. Methane measurements shall be made on a dry basis.

(16) Calibration gas values shall be traceable to the National Bureau of Standards (NBS), "Standard Reference Materials" (SRM's). The analytical accuracy of the calibration gas values shall be within 2.0 percent of the assigned values.

(17) Span gas values shall be traceable to NBS SRM's. The analytical accuracy of the span gas values shall be within 3.0 percent of the assigned values.

(18) Calibration or span gases for the CO and CO₂ analyzers shall have zero-grade nitrogen as a diluent. Calibration or span gases for the CH₄ analyzer shall be CH₄ with zero-grade air or nitrogen as diluent.

(19) Calibration or span gases for the NO_x analyzer shall be NO_x with a maximum NO₂ concentration of 5 percent of the nominal NO value. Zero-grade nitrogen shall be the diluent.

(20) Zero-grade gases for the CO, CO₂, and NO_x analyzers shall be either zero-grade air or zero-grade nitrogen. Zero-grade gas for CH₄ analyzer shall be zero-grade air or nitrogen.

(21) The allowable zero-grade gas (air or nitrogen) impurity concentrations shall not exceed 10 ppm CO, 400 ppm CO₂, and 1 ppm NO.

(c) *Particulate sampling system.* (1) A schematic of a particulate sampling system for testing under this subpart is shown in Figures E-3 and E-4. The system consists of a dilution air filter, dilution tunnel, heat exchanger, pumps, mass measurement device, particulate probe, filters, and associated temperature sensors. A double dilution method or a partial dilution system may also be used in conformance with the specifications required in this paragraph.

(2) The mass of particulate in the exhaust is determined via filtration. The exhaust temperature shall not exceed 125 °F (51.7 °C) at the primary filter.

(3) Exhaust system backpressure shall not be artificially lowered by the particulate sampling system or dilution air inlet.

(4) The gas mixture temperature shall be measured at a point immediately ahead of the pump or mass measurement device and after the heat exchanger and shall be maintained within ± 10 °F (5.6 °C) of the average operating temperature observed during the test.

(5) The flow capacity of the system shall be large enough to eliminate water condensation.

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FIG.E-3 DILUTION TUNNEL/CONSTANT VOLUME SYSTEM

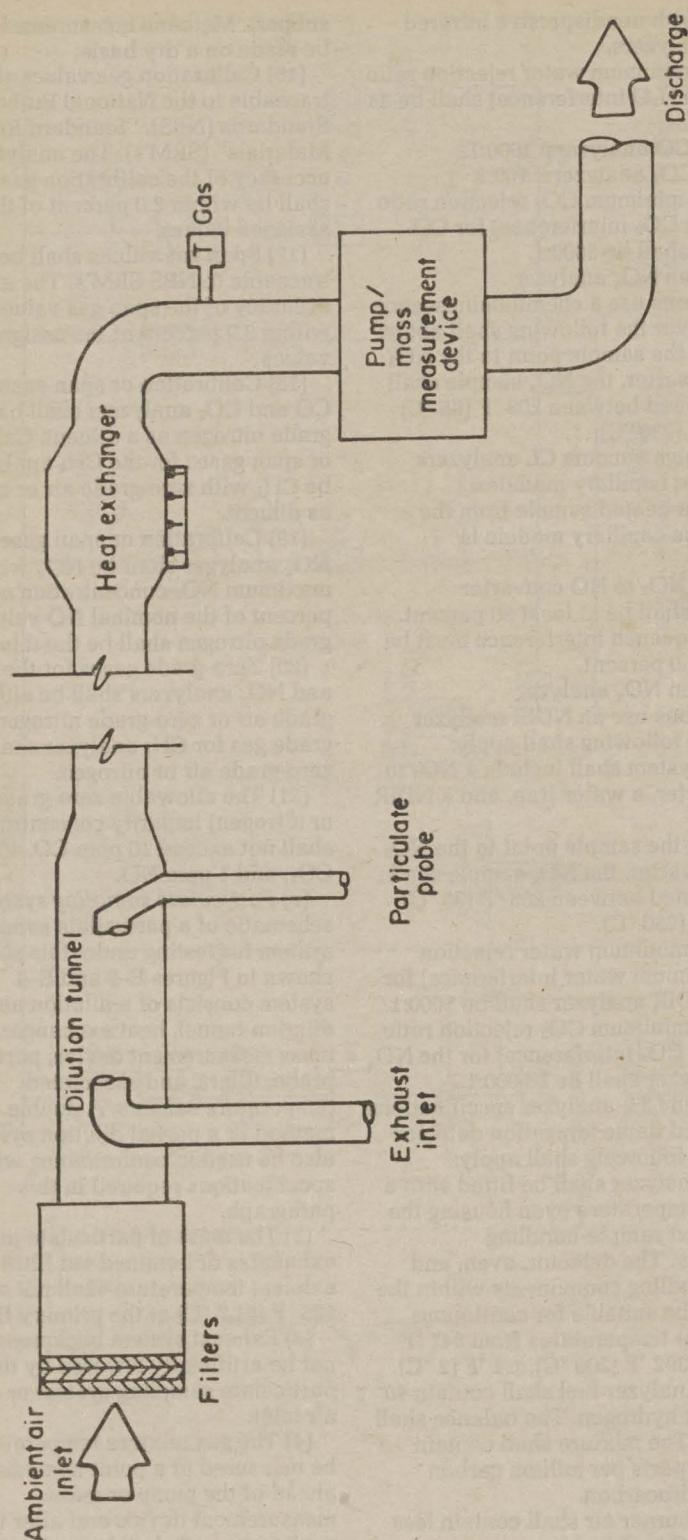
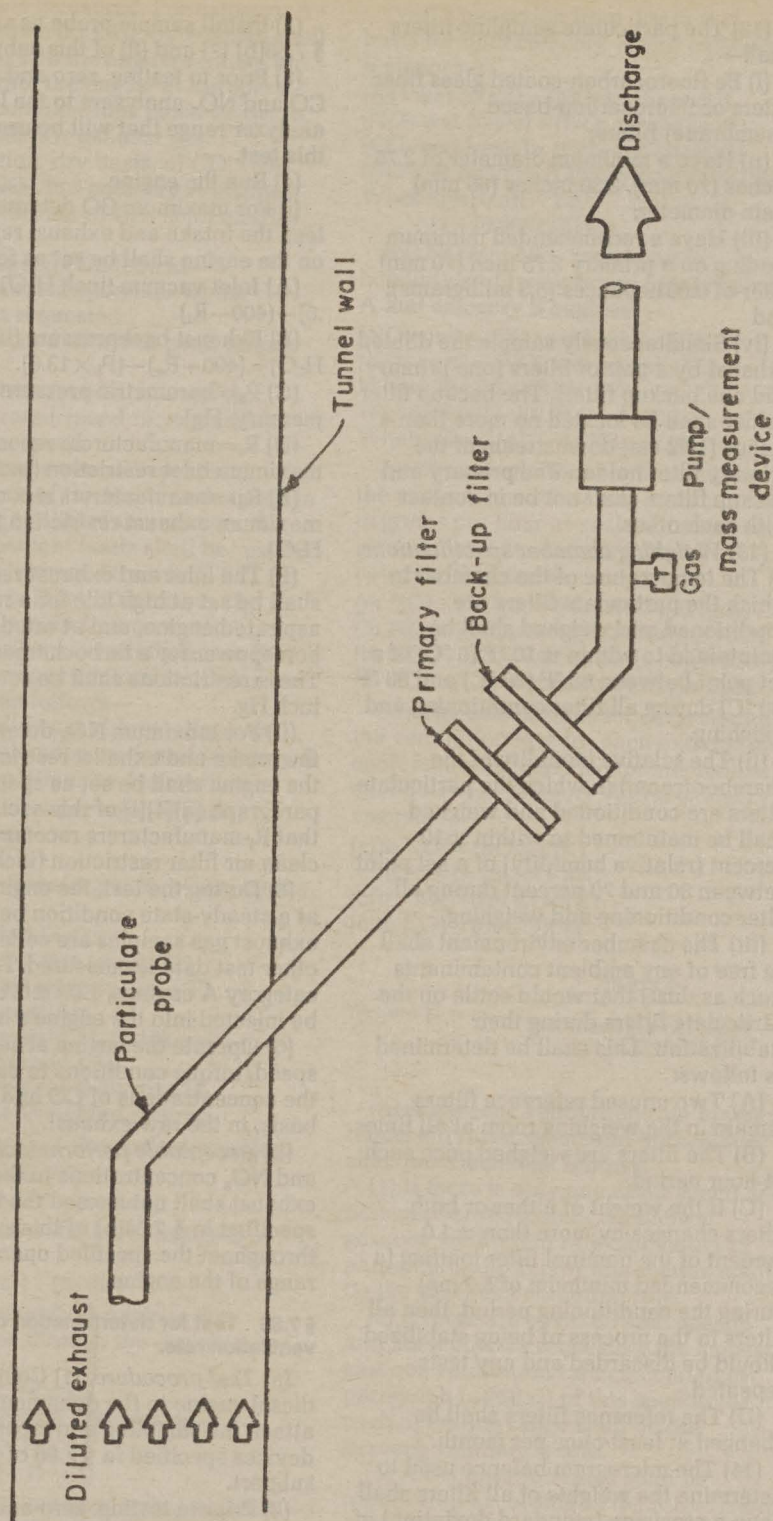
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FIG. E-4 PARTICULATE SAMPLING SYSTEM



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(6) The flow capacity of the system shall maintain the diluted exhaust stream at a temperature of 125 °F (51.7 °C) or less at the particulate sample probe inlet.

(7) The mass flow measurement device of the sample system shall be accurate to ± 5 percent of the indicated reading.

(8) The dilution air shall have a temperature of 77 °F \pm 9 °F (25 °C \pm 5 °C), and be—

(i) Filtered at the air inlet; or
(ii) Sampled to determine background particulate levels, which can then be subtracted from the values measured in the exhaust stream.

(9) The dilution tunnel shall—

(i) Be small enough in diameter to cause turbulent flow (Reynolds number greater than 4,000) and of sufficient length to cause mixing of the exhaust and dilution air;

(ii) Be constructed of electrically conductive material which does not react with the exhaust component;

(iii) Be electrically grounded;

(iv) Have the engine exhaust directed downstream at the point where it is introduced into the dilution tunnel; and

(v) Have a total length of the tubing from the exit of the engine exhaust manifold or turbocharger outlet to the dilution tunnel not to exceed 32 feet. When the total length exceeds 12 feet, then all tubing in excess of 12 feet shall be insulated. The radial thickness of the insulation shall be at least R inches, where $R = 16(k) - (2)r$, where k = Thermal conductivity of the insulating material (Btu/hr-ft-°F), and r = Outer radius of uninsulated tubing (inches).

(10) The particulate sample probe shall—

(i) Be installed in the dilution tunnel facing upstream, on the dilution tunnel centerline, and approximately 10 dilution tunnel diameters downstream of the point where the engine's exhaust enters the dilution tunnel;

(ii) Have 0.5 inches (1.27 cm) minimum inside diameter;

(iii) Have a distance from the probe's sample tip to the filter holder of at least 5 probe diameters for filters located inside the dilution tunnel, and not more than 40 inches (102 cm) for filters located outside the dilution tunnel;

(iv) Be designed to minimize the deposit of particulate in the probe; and

(v) Be constructed of electrically conductive material which does not react with the exhaust components.

(11) The inlet gas temperature to the particulate sample pump or mass measurement device shall remain a constant temperature of ± 5 °F (2.8 °C) if flow compensation is not used.

(12) The particulate sampling filters shall—

(i) Be fluorocarbon-coated glass fiber filters or fluorocarbon-based (membrane) filters;

(ii) Have a minimum diameter of 2.75 inches (70 mm), 2.36 inches (60 mm) stain diameter;

(iii) Have a recommended minimum loading on a primary 2.75 inch (70 mm) filter of 0.0019 ounces (5.3 milligrams); and

(iv) Simultaneously sample the diluted exhaust by a pair of filters (one primary and one backup filter). The backup filter holder shall be located no more than 4 inches (10.2 cm) downstream of the primary filter holder. The primary and backup filters shall not be in contact with each other.

(13) *Weighing chamber specifications.*

(i) The temperature of the chamber in which the particulate filters are conditioned and weighed shall be maintained to within ± 10 °F (6 °C) of a set point between 68 °F (20 °C) and 86 °F (30 °C) during all filter conditioning and weighing.

(ii) The relative humidity of the chamber (room) in which the particulate filters are conditioned and weighed shall be maintained to within ± 10 percent (relative humidity) of a set point between 30 and 70 percent during all filter conditioning and weighing.

(iii) The chamber environment shall be free of any ambient contaminants (such as dust) that would settle on the particulate filters during their stabilization. This shall be determined as follows:

(A) Two unused reference filters remain in the weighing room at all times.

(B) The filters are weighed once each 24-hour period.

(C) If the weight of either or both filters changes by more than ± 1.0 percent of the nominal filter loading (a recommended minimum of 5.3 mg) during the conditioning period, then all filters in the process of being stabilized should be discarded and any tests repeated.

(D) The reference filters shall be changed at least once per month.

(14) The microgram balance used to determine the weights of all filters shall have a precision (standard deviation) of 20 micrograms and readability of 10 micrograms.

§ 7.87 Test for determination of maximum fuel-air ratio.

(a) *Test procedure.* (1) Couple the diesel engine to the dynamometer and connect the sampling and measurement devices specified in § 7.86 of this subpart.

(2) Install sample probe as specified in § 7.86(b) (7) and (8) of this subpart.

(3) Prior to testing, zero and span the CO and NO_x analyzers to the lowest analyzer range that will be used during this test.

(4) Run the engine.

(i) For maximum CO determination test, the intake and exhaust restrictions on the engine shall be set as follows:

(A) Inlet vacuum (inch H₂O) = $(P_b \times 13.6) - (400 - R_i)$.

(B) Exhaust backpressure (inch H₂O) = $(400 + R_e) - (P_b \times 13.6)$.

(C) P_b = barometric pressure (inch mercury, Hg).

(D) R_i = manufacturers recommended maximum inlet restriction (inch H₂O).

(E) R_e = manufacturers recommended maximum exhaust restriction (inch H₂O).

(F) The inlet and exhaust restrictions shall be set at high idle for a naturally aspirated engine, and at rated speed and horsepower for a turbocharged engine. These restrictions shall be set within 0.2 inch Hg.

(ii) For maximum NO_x determination, the intake and exhaust restrictions on the engine shall be set as specified in paragraph (a)(4)(i) of this section except that R_i = manufacturers recommended clean air filter restriction (inch H₂O).

(5) During the test, the engine shall be at a steady-state condition before the exhaust gas samples are collected and other test data is measured. For category A engines, 1.0% \pm 0.1 CH₄ shall be injected into the engine's intake air.

(6) Operate the engine at several speed/torque conditions to determine the concentrations of CO and NO_x, dry basis, in the raw exhaust.

(b) *Acceptable performance.* The CO and NO_x concentrations in the raw exhaust shall not exceed the limits specified in § 7.84(b) of this subpart throughout the specified operational range of the engine.

§ 7.88 Test for determination of ventilation rate.

(a) *Test procedure.* (1) Couple the diesel engine to the dynamometer and attach the sampling and measurement devices specified in § 7.86 of this subpart.

(2) Prior to testing, zero and span the CO, CO₂, NO_x, and CH₄ analyzers to the lowest analyzer range that will be used during this test.

(3) Run the engine. For this test, the intake and exhaust restrictions on the engine shall be set as specified in § 7.87(a)(4)(ii) of this subpart.

(4) During the test, the engine shall be at a steady-state condition before the exhaust gas samples are collected and

other data is measured. For category A engines, $1.0\% \pm 0.1$ CH₄, by volume, shall be injected into the engine's intake air.

(5) Operate the engine at the speed and load combinations listed below to measure the raw exhaust gas concentration, dry basis, of CO, CO₂, NO, and NO₂. For category A engines, the concentration of CH₄ shall also be measured.

(i) Test speeds shall be at—

(A) Each rated speed for which approval is requested.

(B) The speed at which peak torque occurs.

(C) The two speeds between the maximum rated speed requested and peak torque speed.

(D) Governor overrun speeds.

(ii) At each of the test speeds listed in paragraph (a)(5)(i) of this section, the following percent loads shall be run: 100 percent, 90 percent, 80 percent, 70 percent, 60 percent, 50 percent, 25 percent, 2 percent (± 2 percent).

(6) The gaseous ventilation rate for each exhaust gas contaminant shall be calculated as follows—

(i) The following abbreviations shall apply to both category A and category B engine calculations as appropriate—

cfm—Cubic feet per min (ft³/min)

Exh—Exhaust

A—Air (lbs/hr)

H—Grains of water per lb. of dry intake air

J—Conversion factor

m—Mass flow rate (mass/hr)

TI—Intake air temperature (°F)

PCAir—Percent Air

PCCH₄—Percent CH₄ (intake air)

UCH₄—Unburned CH₄

PCECH₄—Percent Exhaust CH₄

TWA—Time Weighted Average

(ii) Exhaust gas flow calculation for category B engines—

(m Exh) = (m air) + (m fuel)

(iii) Fuel/air ratio for category B engines—

(f/a) = (m fuel) / (m air)

(iv) For category A engines the methane flow through the engine is determined by—

PCAir = 100 - PCCH₄

Y = (PCAir)(0.289) + (PCCH₄)(0.16)

Z = (0.16)(PCCH₄) / Y

CH₄ = (A)(Z) / (1 - Z)

(v) Exhaust gas flow calculation for category A engines—

(m Exh) = (m air) + (m fuel) + (m CH₄)

(vi) Unburned CH₄ (lbs/hr) calculation for category A engines—

UCH₄ = (m Exh)(0.00552)(PCECH₄)

(vii) Fuel/air ratio for category A engines—

(f/a) = (m fuel) + (m CH₄) / (m UCH₄) + (m air)

(viii) Conversion from dry to wet basis for both category A and category B engines—

(NO wet basis) = (NO dry basis)(J)

(NO₂ wet basis) = (NO₂ dry basis)(J)

(CO₂ wet basis) = (CO₂ dry basis)(J)

(CO wet basis) = (CO dry basis)(10⁻⁹)(J)

Where J = (f/a)(-1.87)

+ (1 - (0.00022)(H))

(ix) NO and NO₂ correction for humidity and temperature for category A and category B engines—

(NO corr) = (NO wet basis) / (E)

(NO₂ corr) = (NO₂ wet basis) / (E)

Where E = 1.0 + (R)(H - 75) + (G)(TI - 85)

Where R = (f/a)(0.044) - (0.0038)

Where G = (f/a)(-0.116) + (0.0053)

(x) The calculations for determining the m of each exhaust gas contaminant in grams per hour at each test point shall be as follows for category A and category B engines—

(m NO) = (NO corr)(0.000470)(m Exh)

(m NO₂) = (NO₂ corr)(0.000720)(m Exh)

(m CO₂) = (CO₂ wet basis)(6.89)(m Exh)

(m CO) = (CO wet basis)(4.38)(m Exh)

(xi) The calculations for determining the ventilation rate for each exhaust gas contaminant at each test point shall be as follows for category A and category B engines—

(cfm NO) = (m NO)(K)

(cfm NO₂) = (m NO₂)(K)

(cfm CO₂) = (m CO₂)(K)

(cfm CO) = (m CO)(K)

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Where K =

(pollutant grams/mole)
(pollutant TWA)

(b) A gaseous ventilation rate for each requested rated speed and horsepower shall be selected as follows:

(1) If there is only one rated speed and horsepower requested, the highest gaseous ventilation rate calculated in paragraph (a)(6)(xi) of this section shall be the gaseous ventilation rate.

(2) If there are several rated speeds and horsepower requested, the highest gaseous ventilation rate calculated in paragraph (a)(6)(xi) of this section for each operating range shall be the gaseous ventilation rate.

(3) All ventilation rates shall be rounded up according to the rates listed:

(i) Ventilation rates less than 20,000 cfm shall be rounded up to the next 500 cfm.

Example: 10,432 cfm shall be listed 10,500 cfm.

(ii) Ventilation rates greater than 20,000 cfm shall be rounded up to the next 1,000 cfm.

Example: 26,382 cfm shall be listed 27,000 cfm.

§ 7.89 Test for determination of particulate index.

(a) *Test procedure.* (1) Couple the diesel engine to the dynamometer and connect the sampling and measurement devices specified in § 7.86(a) and § 7.86(c) of this subpart.

(2) Prior to testing, condition and weigh the particulate filters as follows:

(i) At least 1 hour, but not more than 80 hours, before the test, place each filter in an open petri dish and place in a weighing chamber (room) for stabilization.

(ii) At the end of the stabilization period, weigh each filter on a balance. The reading is the tare weight.

(iii) The filter shall then be stored in a covered petri dish or a sealed filter holder, either of which shall remain in the weighing chamber until needed for testing.

(iv) If the filter is not used within 1 hour of its removal from the weighing chamber, it must be re-weighed before use. This limit of 1 hour may be replaced by an 8-hour limit if any of the following three conditions are met—

(A) A stabilized filter is placed and kept in a sealed filter holder assembly with the ends plugged; or,

(B) A stabilized filter is placed in a sealed filter holder assembly, which is then immediately placed in a sample line through which there is no flow; or,

(C) A combination of the conditions specified in paragraph (a)(2)(iv) of this section.

(3) Run the engine. For this test, the intake and exhaust restrictions on the engine shall be set as specified in § 7.87(a)(4)(ii) of this subpart.

(4) During the test, the engine shall be at a steady state condition before the particulate sample is collected and other test data is measured. For category A engines, $1.0\% \pm 0.1$ CH₄, by volume, shall be injected into the engine's intake air.

(5) Operate the engine at the speed and load conditions listed below to collect particulate on the primary filter to a minimum loading of 0.0019 ounces (5.3 mg). One composite filter may be collected or ten individual filters may be collected at the specified speed and load conditions.

(i) Test speeds shall be—

(A) Rated speeds for which approval is requested.

(B) Intermediate speed.

(ii) Test load shall be at 10 percent, 75 percent, 50 percent, 25 percent, 2 percent (± 2 percent) for each test speed.

(6) After completion of the test, condition and weigh the particulate filters in the weighing chamber as follows—

(i) Condition the filters for at least 1 hour, but not more than 80 hours, in an open petri dish.

(ii) At the end of the stabilization period, weigh each filter on a balance. The reading is the gross weight.

(iii) The net weight of each filter is its gross weight minus its tare weight. If the sample on the filter contacts the petri dish or any other surface, the test is void and must be rerun.

(iv) A ratio of net weights will be determined by the following formula—

$$\text{Ratio of net weights} = \frac{(\text{Net Weight}) \text{ Primary Filter } (P_F)}{(\text{Net Weight}) \text{ Primary Filter} + (\text{Net Weight}) \text{ Backup Filter.}}$$

If the ratio of weights is greater than 0.95, then P_F is the net weight of the primary filter only.

If the ratio of net weights is less than or equal to 0.95, then P_F is the sum of the net weights of the primary filter and the backup filter.

(v) The following optional weighing procedure is permitted—

(A) At the end of the stabilization period, weigh both the primary and backup filters as a pair on the balance. This reading is the tare weight.

(B) After the test, in removing the filters from the filter holder, the backup filter is inverted on top of the primary filter. They must then be conditioned in the weighing chamber for at least 1 hour, but not more than 80 hours. The filters are then weighed as a pair. This reading is the gross weight of the filters.

(7) The particulate index for the mass particulate shall be calculated from the equations listed below—

(i) Abbreviations used—

cfm—Cubic feet per min (ft^3/min)

Part—Particulate (mg/min)

m mix—Mass flow rate of total diluted exhaust volume (mass/min)

m sample—Mass flow rate of total sample removed from dilution tunnel (mass/min)

P_F part—Mass particulate on filter measured at test point (mg) as determined in paragraph (a)(6)(iv) of this section.

(ii) Mass of particulate emitted per minute (grams/min)

$$\text{Part } \text{mg}/\text{min} = \frac{(\text{m mix } \text{mass}/\text{min} + \text{m sample } \text{mass}/\text{min})}{(P_F \text{ part } \text{mg})} \times (\text{m sample } \text{mass}/\text{min})$$

(iii) Determination of particulate index for the mass particulate at each test point shall be as follows: cfm

$$\text{Part} = (\text{Part } \text{mg}/\text{min}) (35.31 \text{ ft}^3/\text{m}^3) \div (1 \text{ mg}/\text{m}^3)$$

(b) A particulate index for each requested rated speed and horsepower shall be selected as follows—

(1) If there is only one rated speed and horsepower requested, the particulate index shall be the average of the ten filters or the composite filter collected as calculated in paragraph (a)(7)(iii) of this section.

(2) If there are several rated speeds and horsepower requested, a separate particulate index will be determined for each requested rating as calculated in paragraph (a)(7)(iii) of this section.

(3) The particulate index shall be rounded up according to the rates listed—

(i) Particulate indices less than 20,000 cfm shall be rounded up to the next 500 cfm.

Example: 10,432 cfm shall be listed 10,500 cfm.

(ii) Particulate indices greater than 20,000 cfm shall be rounded up to the nearest thousand (1,000) cfm.

Example: 26,382 cfm shall be listed 27,000 cfm.

§ 7.90 Approval marking.

Each approved diesel engine shall be identified by a legible and permanent approval marking inscribed with the assigned MSHA approval number and securely attached to the diesel engine. The marking shall also contain the following information:

(a) Ventilation rate.

(b) Rated power.

(c) Rated speed.

(d) High idle.

(e) Maximum altitude before deration.

(f) Engine model number.

§ 7.91 Post-approval product audit.

Upon request by MSHA, but not more than once a year except for cause, the approval holder shall make a diesel engine available for audit at no cost.

§ 7.92 New technology.

MSHA may approve a diesel engine that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that the diesel engine is as safe as those which meet the requirements of this subpart.

Subpart F—Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment is Required

§ 7.95 Purpose and effective date.

This subpart establishes the specific requirements for approval of diesel power packages intended for use in

areas of underground mines where permissible electric equipment is required. It is effective (60 days after the date of publication of the final rule in the Federal Register).

§ 7.96 Definitions.

The following definitions apply in this subpart.

Corrosion-resistant material. Material that has at least the corrosion-resistant properties of type 304 stainless steel.

Cylindrical joint. A joint composed of two contiguous, concentric, cylindrical surfaces.

Diesel power package. A diesel engine with an intake system, exhaust system, and a safety shutdown system installed.

Exhaust conditioner. A corrosion-resistant enclosure, containing a cooling system, through which the exhaust gases pass.

Exhaust system. A system connected to the outlet of the diesel engine which includes the exhaust manifold, the exhaust pipe, the exhaust conditioner, the exhaust flame arrester, and any adapters between the exhaust manifold and exhaust flame arrester.

Explosive mixture. A mixture of methane or natural gas with normal air, that will propagate flame or explode violently when ignited.

Fastening. A device such as a bolt, screw, or stud used to secure adjoining parts to prevent the escape of flame from the diesel power package.

Flame arrester. A device which allows the passage of gases, but which prevents the passage of flame.

Flame arresting path (explosion-proof joint). Two or more adjoining or adjacent surfaces between which the escape of flame is prevented.

Grade. The slope of an incline expressed as a percent.

High idle speed/no load. The maximum no load speed specified by the engine manufacturer.

Idle speed/no load. The minimum no load speed specified by the engine manufacturer.

Intake system. A system connected to the inlet of the diesel engine which includes the intake manifold, the intake flame arrester, the emergency intake air shutoff device, the air cleaner, and all piping and adapters between the intake manifold and air cleaner.

Plane joint. A joint comprised of two adjoining surfaces in parallel planes.

Rated speed. The speed at which the engine manufacturer specifies the rated brake horsepower of the engine.

Safety shutdown system. A system which, in response to signals from various safety sensors, recognizes the

existence of a potential hazardous condition and automatically shuts off the fuel supply to the engine.

Step (rabbet) joint. A joint comprised of two adjoining surfaces with a change in direction between its inner and outer edges. A step joint may be composed of a cylindrical portion and a plane portion or of two or more plane portions.

Threaded joint. A joint consisting of a male and female threaded member, both of which are the same type and thread gauge.

§ 7.97 Application requirements.

(a) An application for approval of a diesel power package shall contain sufficient information to document compliance with the technical requirements of this subpart and include the following information—

(1) Drawings, specifications, and descriptions with dimensions (including tolerances) demonstrating compliance with the technical requirements of this subpart. The specifications and descriptions shall include the materials of construction and quantity.

(2) A general arrangement drawing showing the diesel power package and the location and identification of the intake system, exhaust system, safety shutdown system sensors, flame arresters, exhaust conditioner, emergency intake air shutoff device, automatic fuel shutoff device and the engine.

(3) Diesel engine specifications including the MSHA approval number, and speed, horsepower, and fuel flow if different than the maximum rated condition in the engine approval.

(4) A schematic which includes the location and identification of all water-cooled components, coolant lines, radiator, surge tank, temperature sensors, and orifices; arrows indicating proper flow direction; the height relationship of water-cooled components to the surge tank; and the proper procedure for filling the cooling system.

(5) A schematic showing the relative location and identification of components in the safety shutdown system.

(6) Specific component identification, or specific information including detail drawings that identify the characteristics of the cooling system and safety shutdown system that ensures compliance with the technical requirements.

(7) Detail drawings of gaskets used to form explosion-proof joints.

(8) An assembly drawing showing the location and identification of all intake system components from the air cleaner to the engine head.

(9) An assembly drawing showing the location and identification of all exhaust system components from the engine head (excluding the dilution system).

(10) Detail drawings of those intake and exhaust system components identified in §§ 7.97(a)(1)(vii) and 7.97(a)(1)(viii) of this subpart that ensure compliance with the technical requirements. If an exhaust conditioner is used, an exhaust conditioner assembly drawing shall be provided showing the location, dimensions, and identification of all internal parts, exhaust inlet and outlet, sensors, fill port, drain port, low water check port; high or normal operating water level; minimum allowable low water level; maximum allowable grade to maintain explosion-proof operations; and exhaust gas path through the exhaust conditioner.

(11) A power package checklist which shall consist of a list of specific features that must be checked and tests that must be performed to determine if a previously approved diesel power package is in approved condition. Test procedures shall be specified in sufficient detail to allow the evaluation to be made without reference to other documents. Illustrations shall be used to fully identify the approved configuration of the diesel power package.

(12) Information showing that the electrical systems and components meet the requirements of § 7.98 of this subpart.

(13) A drawing list consisting of a complete list of those drawings and specifications which show the details of the construction and design of the diesel power package.

(b) Composite drawings specifying the required details of construction are acceptable instead of the individual detailed drawings in paragraph (a) of this section.

(c) All documents shall be titled, dated, numbered, and include the latest revision number.

(d) When all testing has been completed, the following information shall be submitted and become part of the approval documentation:

(1) The settings of any adjustable devices used to meet the performance requirements of this subpart.

(2) The coolant temperature sensor setting and exhaust gas temperature sensor setting used to meet the performance requirements of this subpart.

(3) The minimum allowable low water level and the low water sensor setting used to meet the performance requirements of this subpart.

(4) The maximum grade on which the exhaust conditioner can be operated

retaining the flame arresting characteristics.

(5) A finalized version of the power package checklist.

§ 7.98 Technical requirements.

(a) The diesel power package shall use a category A diesel engine approved under subpart E of part 7 of this chapter with the following additional requirements:

(1) A hydraulic, pneumatic, or other mechanically actuated starting mechanism. Other means of starting shall be evaluated in accordance with the provisions of § 7.107.

(2) If an air compressor is provided, the intake air line shall be connected to the engine intake system between the air cleaner and the flame arrester or the air compressor shall have an integral air filter.

(b) The temperature of any external surface of the diesel power package shall not exceed 302 °F (150 °C). Diesel power package designs using water jacketing to meet this requirement shall be tested in accordance with § 7.101 of this subpart. Diesel power packages using other techniques will be evaluated under the provisions of § 7.107 of this subpart. When using water-jacketed components, provisions shall be made for positive circulation of coolant, venting of the system to prevent the accumulation of air pockets, and effective activation of the safety shutdown system before the temperature of the coolant in the jackets exceeds the manufacturer's specifications or 212 °F (100 °C), whichever is lower.

(c) External rotating parts shall not be constructed of aluminum alloys containing more than 0.6 percent magnesium.

(d) If nonmetallic fans are used, they shall prevent an accumulation of static electricity. Static conducting materials shall have a total resistance of 1 megohm or less, measured with an applied potential of 500 volts or more. Static conducting materials having a total resistance greater than 1 megohm will be evaluated under the provisions of § 7.107 of this subpart.

(e) All V-belts shall be static conducting and have a resistance not exceeding 6 megohms, when measured with a direct current potential of 500 volts or more.

(f) The engine crankcase breather shall not be connected to the air intake system of the engine. The discharge from the breather shall be directed away from hot surfaces of the engine and exhaust system.

(g) Electrical components on diesel power packages shall be certified or approved by MSHA under Parts 7, 18, 20, and 27 of this chapter.

(h) Electrical systems on diesel power packages consisting of electrical components, interconnecting wiring, and mechanical and electrical protection shall meet the requirements of Parts 7, 18, and 27 of this chapter as applicable.

(i) The diesel power package shall be equipped with a safety shutdown system which will automatically shut off the fuel supply and stop the engine in response to signals from sensors indicating—

(1) The coolant temperature limit specified in § 7.98(b) of this subpart;

(2) The exhaust gas temperature limit specified in § 7.98(s)(4) of this subpart; or

(3) The minimum allowable low water level as established by tests of § 7.100 of this subpart. Restarting of the engine shall be prevented until the water level in the exhaust conditioner has been replenished above the minimum allowable low water level.

(j) The safety shutdown system shall have the following features:

(1) A means to automatically disable the starting circuit and prevent engagement of the starting mechanism while the engine is running, or a starting mechanism constructed of nonsparking materials.

(2) If the design of the safety shutdown system requires that the lack of engine oil pressure must be overridden to start the engine, the override shall not be capable of overriding any of the safety shutdown sensors specified in paragraph (i) of this section.

(k) The diesel power package shall be explosion-proof when tested in accordance with the explosion tests of § 7.100 of this subpart.

(l) Engine joints that directly or indirectly connect the combustion chamber to the surrounding atmosphere shall be explosion-proof in accordance with paragraphs (m) through (q) of this section and § 7.100 of this subpart. This paragraph does not apply to the following:

- (i) Pistons and piston rings.
- (ii) Pistons and cylinder walls.
- (iii) Piston rings and cylinder walls.
- (iv) Cylinder head to cylinder block.
- (v) Valve stem to valve guide.
- (vi) Injector body to cylinder head.

(m) Each segment of the intake system and exhaust system required to provide explosion-proof features shall be constructed of metal and designed to withstand an internal pressure equal to four times the maximum pressure observed in that segment in tests of

§ 7.100 of this subpart or a pressure of 150 psig, whichever is less. Castings shall be free from blowholes.

(n) Welded joints forming the explosion-proof intake and exhaust systems shall be continuous and gas-tight. At a minimum, they shall be made in accordance with American Welding Society Standard D14.4-77 or meet the test requirements of § 7.104 of this subpart with the internal pressure equal to four times the maximum pressure observed in tests of § 7.100 of this subpart or a pressure of 150 psig, whichever is less.

(o) Flexible connections shall be permitted in segments of the intake and exhaust systems required to provide explosionproof features, provided that failure of the connection activates the safety shutdown system before the explosion-proof characteristics are lost.

(p) Explosion-proof joints in the intake and exhaust systems shall be formed either by—

(1) Flanged metal to metal joints meeting the requirements of paragraph (q) of this section; or

(2) Metal flanges fitted with metal gaskets and meeting the following requirements:

(i) Flat surfaces between bolt holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in paragraph (q)(7) of this section. All metal surfaces forming a flame-arresting path shall be finished in manufacture to not more than 250 microinches.

(ii) A means shall be provided to ensure that fastenings maintain the tightness of joints. The means provided shall not lose its effectiveness through repeated assembly and disassembly.

(iii) Fastenings shall be uniform in size to preclude improper assembly.

(iv) Holes for fastenings shall not penetrate to the interior of an intake or exhaust system and shall be threaded to ensure that all specified bolts or screws will not bottom even if the washers are omitted.

(v) Fastenings used for joints of flame-arresting paths on intake or exhaust systems shall be used only for attaching parts that are essential in maintaining the explosion-proof integrity. They shall not be used for attaching brackets or other parts.

(vi) The minimum thickness of material for flanges shall be ½-inch, except that a final thickness of ⅜-inch is allowed after machining rolled plate.

(vii) The maximum fastening spacing shall be 6 inches.

(viii) The minimum diameter of fastenings shall be ⅝-inch, except smaller diameter fastenings may be

used if the joint first meets the requirements of the static pressure test in § 7.104 of this subpart, and the explosion test in § 7.100 of this subpart.

(ix) The minimum thread engagement of fastenings shall be equal to or greater than the nominal diameter of the fastenings specified, or the intake or exhaust system must meet the test requirements of the static pressure test in § 7.104 of this subpart.

(x) The minimum contact surface of gaskets forming flamearresting paths shall be ⅜-inch, and the thickness of the gaskets shall be no greater than ⅛-inch. The minimum distance from the interior edge of a gasket to the edge of a fastening hole shall be ⅜-inch. The gaskets shall be positively positioned, and a means shall be provided to preclude improper installation. When the joint is completely assembled, it shall be impossible to insert a 0.0015-inch thickness gauge to a depth exceeding ⅛-inch between the gasket and mating flanges.

(q) The following construction requirements shall apply to explosion-proof joints:

(1) Flat surfaces between bolt holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in paragraph (q)(7) of this section. All metal surfaces forming a flame-arresting path shall be finished in manufacture to not more than 250 microinches. When a thin film of nonhardening preparation to inhibit rusting is applied to these finished metal surfaces, it shall not promote the adherence of foreign materials.

(2) A means shall be provided to ensure that fastenings maintain the tightness of joints. The means provided shall not lose its effectiveness through repeated assembly and disassembly.

(3) Fastenings shall be uniform in size to preclude improper assembly.

(4) Holes for fastenings shall not penetrate to the interior of an intake or exhaust system and shall be threaded to ensure that all specified bolts or screws will not bottom even if the washers are omitted.

(5) Fastenings used for joints of flame-arresting paths on intake or exhaust systems shall be used only for attaching parts that are essential in maintaining the explosion-proof integrity. They shall not be used for attaching brackets or other parts.

(6) The flame-arresting path of threaded joints shall conform to the requirements of paragraph (q)(7) of this section.

(7) Intake and exhaust systems joints shall meet the following specifications:

Minimum thickness of material for flanges.....	1 1/2"
Minimum width of joint-all in one plane.....	1"
Maximum clearance-joint all in one plane.....	2 0.004"
Minimum width of joint, portions of which are different planes-cylinders or equivalent.....	3 3/4"
Maximum clearances-joint in two or more planes, cylinders or equivalent:	
Portion perpendicular to plane.....	4 0.008"
Plane portion.....	0.006"
Maximum fastening ⁵ spacing-joints all in one plane ⁶ with minimum of 4 fastenings.....	6"
Maximum fastening spacing-joints, portions of which are in different planes with minimum of 4 fastenings.....	8"
Minimum diameter of fastening (without regard to type of joint) ⁷	3/8"
Minimum thread engagement of fastenings ⁸	3/8"
Maximum diametrical clearance between fastening body and unthreaded holes through which it passes ⁹	1/16"
Minimum distance from interior of the intake or exhaust system to the edge of a fastening hole: ¹⁰	
Joint-minimum width 1".....	11 12 1/16"
Shafts centered by ball or roller bearings:	
Minimum length of flame-arresting path.....	1"
Maximum diametrical clearance.....	0.010"
Shafts through journal bearings:	
Minimum length of flame-arresting path.....	1"
Maximum diametrical clearance.....	0.010"

¹ 1/16-inch less is allowable for machining rolled plate.

² 0.006-inch for cylindrical joints.

³ If only two planes are involved, neither portion of a joint shall be less than 1/8-inch wide, unless the wider portion conforms to the same requirements as those for a joint that is all in one plane. If more than two planes are involved, the combined lengths of those portions having prescribed clearances are considered.

⁴ The allowable diametrical clearance is 0.008-inch when the portion perpendicular to the plane portion is 1/4-inch or greater in length. If the perpendicular portion is more than 1/4-inch but less than 1/2-inch wide, the diametrical clearance shall not exceed 0.006-inch.

⁵ When studs are provided, they shall bottom in blind holes, be completely welded in place, or the bottom of the hole shall be closed with a plug secured by weld or braze. Fastenings shall be provided at all corners.

⁶ The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the intake or exhaust system apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 5 inches.

⁷ Fastening diameters smaller than specified may be used if the joint or assembly meets the test requirements of first § 7.104 and then § 7.100 of this subpart.

⁸ Minimum thread engagement shall be equal to or greater than the nominal diameter of the fastening specified, or the intake or exhaust system must meet the test requirements of § 7.104 of this subpart.

⁹ The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the intake or exhaust system apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 5 inches.

¹⁰ Edge of the fastening hole shall include any edge of any machining done to the fastening hole, such as chamfering.

¹¹ The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the intake or exhaust system apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 5 inches.

¹² If the diametrical clearance for fastenings does not exceed 1/32-inch, then the minimum distance shall be 1/4-inch.

(r) *Intake system.* (1) The intake system shall include a device between the air cleaner and intake flame arrester, operable from the equipment operator's compartment, to shut off the air supply to the engine for emergency purposes. Upon activation, the device must operate immediately and the engine shall stop within 15 seconds.

(2) The intake system shall include a flame arrester that will prevent an explosion within the system from propagating to a surrounding atmosphere when tested in accordance with the explosion tests in § 7.100 of this subpart. The flame arrester shall be located between the air cleaner and the intake manifold and shall be attached so that it can be removed for inspection or cleaning. The flame arrester shall be constructed of corrosion-resistant metal and meet the following requirements:

(i) Two intake flame arrester designs, the spaced-plate type and the crimped ribbon type, will be tested in accordance with the requirements of § 7.100 of this subpart. Variations to these designs or other intake flame arrester designs will be evaluated under the provisions of § 7.107 of this subpart.

(ii) In flame arresters of the spaced-plate type, the thickness of the plates shall be at least 0.125-inch; spacing between the plates shall not exceed 0.018-inch; and the flame-arresting path formed by the plates shall be at least 1 inch wide. The unsupported length of the plates shall be short enough that permanent deformation resulting from explosion tests shall not exceed 0.002-inch. The plates and flame arrester housing shall be an integral unit which cannot be disassembled.

(iii) In flame arresters of the crimped ribbon type, the dimensions of the core openings shall be such that a plug gauge 0.018-inch in diameter shall not pass through, and the flame-arresting path core thickness shall be at least 1 inch. The core and flame arrester housing

shall be an integral unit which cannot be disassembled.

(3) The intake system shall be designed so that improper installation of the flame arrester is impossible.

(4) The intake system shall include an air cleaner service indicator. The air cleaner shall be installed so that only filtered air will enter the flame arrester. The air cleaner shall be sized and the service indicator set in accordance with the engine manufacturer's recommendations. Unless the service indicator is explosion-proof, it shall be located between the air cleaner and flame arrester, and the service indicator setting shall be reduced to account for the additional restriction imposed by the flame arrester.

(5) The intake system shall include a connection between the intake flame arrester and the engine head for temporary attachment of a device to indicate the total vacuum in the system.

(s) *Exhaust system.* (1) The exhaust system shall include a flame arrester that will prevent an explosion within the system from propagating to a surrounding atmosphere. The flame arrester shall be constructed of corrosion-resistant metal.

(i) If a mechanical flame arrester is used, it shall be positioned so that only cooled exhaust gas at a maximum temperature of 302 °F (150 °C) will be discharged through it.

(ii) If a spaced-plate flame arrester is used, it must meet the requirements of paragraph (r)(2)(ii) of this section and be used in conjunction with exhaust conditioners meeting the test requirements of § 7.100 of this subpart. Variations to the spaced-plate flame arrester design and other flame arrester designs used in conjunction with exhaust conditioners shall be evaluated under the provisions of § 7.107 of this subpart. The flame arrester shall be designed and attached so that it can be removed for inspection and cleaning.

(2) The exhaust system shall allow an exhaust conditioner to be used as the exhaust flame arrester provided that the explosion tests of § 7.100 of this subpart demonstrate that the exhaust conditioner will arrest flame. When used as a flame arrester, the exhaust conditioner shall be equipped with a sensor to automatically activate the safety shutdown system at or above the minimum allowable low water level established by § 7.100 of this subpart. Restarting of the engine shall be prevented until the water supply in the exhaust conditioner has been replenished above the minimum allowable low water level. All parts of the exhaust conditioner and associated

components that come in contact with contaminated exhaust conditioner water shall be constructed of corrosion-resistant material. The exhaust conditioner shall include a means for verifying that the safety shutdown system operates at the proper water level. A means shall be provided for draining and cleaning the exhaust conditioner. The final exhaust gas temperature as discharge from the exhaust conditioner shall not exceed 170 °F (76 °C) under test conditions specified in § 7.102 of this subpart. A sensor shall be provided that activates the safety shutdown system before the exhaust gas temperature at discharge from the exhaust conditioner exceeds 185 °F (85 °C) under test conditions specified in § 7.103(a)(4) of this subpart.

(3) The exhaust system shall be designed so that improper installation of the flame arrester is impossible.

(4) The exhaust system shall provide a means to cool the exhaust gas and prevent discharge of glowing particles.

(i) The temperature of the exhaust gas at discharge from the diesel power package shall not exceed 302 °F (150 °C) when tested in accordance with the surface temperature test of § 7.101 of this subpart. A sensor shall be provided that activates the safety shutdown system before the exhaust gas exceeds 302 °F (150 °C) when tested in accordance with the safety system control test in § 7.103 of this subpart.

(ii) When an exhaust conditioner is used to cool the exhaust gas and prevent the discharge of glowing particles, the temperature of the exhaust gas at discharge from the exhaust conditioner shall not exceed 170 °F (76 °C) when tested in accordance with the exhaust gas cooling efficiency test in § 7.102 of this subpart. A sensor shall be provided that activates the safety shutdown system before the exhaust gas temperature at discharge from the exhaust conditioner exceeds 185 °F (85 °C) when tested in accordance with the safety system controls test in § 7.103 of this subpart. All parts of the exhaust conditioner and associated components that come in contact with contaminated exhaust conditioner water shall be constructed of corrosion-resistant material.

(5) Other means for cooling the exhaust gas and preventing the propagation of flame or discharge of glowing particles shall be evaluated under the provisions of § 7.107 of this subpart.

(6) There shall be a connection in the exhaust system for temporary attachment of a device to indicate the total backpressure in the system.

§ 7.99 Critical characteristics.

The following critical characteristics shall be inspected or tested on each diesel power package to which an approval marking is affixed:

(a) Finish, width, planarity, and clearances of surfaces that form any part of a flame-arresting path.

(b) Thickness of walls and flanges that are essential in maintaining the explosion-proof integrity of the diesel power package.

(c) Size, spacing, and tightness of fastenings.

(d) The means provided to maintain tightness of fastenings.

(e) Length of thread engagement on fastenings and threaded parts that ensure the explosion-proof integrity of the diesel power package.

(f) Diesel engine approval marking.

(g) Fuel rate setting to ensure that it is appropriate for the intended application, or a warning tag shall be affixed to the fuel system notifying the purchaser of the need to make proper adjustments.

(h) Material and dimensions of gaskets that are essential in maintaining the explosion-proof integrity of the diesel power package.

(i) Dimensions and assembly of flame arresters.

(j) Materials of construction to ensure that the intake system, exhaust system, cooling fans, and belts have been fabricated from the required material.

(k) Proper interconnection of the coolant system components and use of specified components.

(l) Proper interconnection of the safety shutdown system components and use of specified components.

(m) All plugs and covers to ensure that they are tightly installed.

(n) The inspections and tests described in the diesel power package checklist shall be performed and all requirements shall be met.

§ 7.100 Explosion tests.

(a) *Test procedures.* (1) Prepare for diesel power package testing as follows:

(i) Perform a detailed check of parts against the drawings and specifications submitted under § 7.97 of this subpart to determine that the parts and drawings coincide.

(ii) Remove all parts that do not contribute to the operation or ensure the explosion-proof integrity of the diesel power package such as the air cleaner and exhaust gas dilution system.

(iii) Fill coolant system fluid and engine oil to the engine manufacturer's recommended levels.

(iv) Remove all liquid fuel from the lines, filter, fuel pump, and engine.

(v) Establish a preliminary exhaust conditioner low water level.

(2) Perform static and dynamic tests of the intake system as follows:

(i) Install the diesel power package in an explosion test chamber which is large enough to contain the complete diesel power package and has a means to observe all side of the diesel power package. Couple the diesel power package to an auxiliary drive mechanism. Attach a pressure measuring device, a temperature measuring device, and an ignition source to the intake system. The pressure measuring device shall be capable of indicating the peak pressure accurate to ± 1 pound-per-square inch gauge (psig) at 100 psig static pressure and shall have a frequency response of 40 Hertz or greater. The ignition source shall be an electric spark with a minimum energy of 100 millijoules. The ignition source shall be located immediately adjacent to the intake manifold and the pressure and temperature devices shall be located immediately adjacent to the flame arrester.

(ii) Fill the exhaust conditioner to the specified high or normal operating water level.

(iii) Fill the test chamber with a mixture of natural gas and air or methane and air. If natural gas is used, the content of methane and ethane shall total at least 98.0 percent, by volume, with nitrogen and propane the remainder. For all tests, the methane concentration shall be 7 ± 0.1 to 10 ± 0.1 percent, by volume, and the oxygen concentration shall be 18 to 21 percent, by volume. If the concentrations fall below the specified values, the test chamber shall be purged and refilled.

(iv) Using the auxiliary drive mechanism, motor the engine to fill the intake and exhaust systems with the explosive mixture. The intake system, exhaust system, and test chamber gas concentration shall not differ by more than ± 0.3 percent, by volume, at the time of ignition.

(v) For static tests, stop the engine, actuate the ignition source, and observe the peak pressure. The peak pressure shall not exceed 125 psig. If the peak pressure exceeds 125 psig, construction changes shall be made that result in a reduction of pressure to 125 psig or less, or the system shall be tested in accordance with the static pressure test of § 7.104 of this subpart with the pressure parameter replaced with a static pressure of twice the highest value recorded.

(vi) If the peak pressure does not exceed 125 psig or if the system meets the static pressure test requirements of this section and there is no discharge of visible flames or glowing particles or

ignition of the explosive mixture in the chamber, a total of 20 tests shall be conducted in accordance with the explosion test specified above.

(vii) For dynamic tests, follow the same procedures for static tests, except actuate the ignition source while motoring the engine. A total of 40 dynamic tests shall be conducted, twenty at rated speed and twenty at 50 percent of rated speed. Under some circumstances, during dynamic testing the explosive mixture may continue to burn within the diesel power package after ignition. This condition can be recognized by the presence of a rumbling noise and a rapid increase in temperature. Ignition of the explosive mixture in the test chamber under these circumstances does not constitute failure of the flame arrester.

(3) Perform static and dynamic tests of the exhaust system as follows:

(i) Prepare the diesel power package for explosion tests according to § 7.100(a)(2)(i) of this subpart, with the ignition source located immediately adjacent to the exhaust manifold. Pressure measuring devices shall be located in each segment as follows: immediately adjacent to the exhaust conditioner inlet; in the exhaust conditioner; and immediately adjacent to the flame arrester, if applicable. A temperature device shall be located immediately adjacent to the exhaust conditioner inlet.

(ii) If the exhaust system is provided with a spaced-plate flame arrester in addition to an exhaust conditioner, explosion tests of the exhaust system shall be performed as described for the intake system in accordance with this section. Water shall not be present in the exhaust conditioner for the tests.

(iii) If the exhaust conditioner is used as the flame arrester, explosion testing of this type of system shall be performed as described for the intake system in accordance with this section with the following modifications:

(A) Twenty static tests, twenty dynamic tests at rated speed, and twenty dynamic tests at 50 percent of rated speed shall be conducted at 2 inches below the minimum allowable low water level with all entrances in the exhaust conditioner which do not contribute to the explosion-proof characteristics of the exhaust system, including lines which connect the reserve water supply to the exhaust conditioner, opened.

(B) Twenty static tests, twenty dynamic tests at rated speed, and twenty dynamic tests at 50 percent of rated speed shall be conducted at 2 inches below the minimum allowable low water level with all entrances in the

exhaust conditioner (except the exhaust conditioner outlet) which do not contribute to the explosion-proof characteristics of the exhaust system, including lines which connect the reserve water supply to the exhaust conditioner, closed.

(C) Twenty static tests, twenty dynamic tests at rated speed, and twenty dynamic tests at 50 percent of rated speed shall be conducted at the specified high or normal operating water level with all entrances in the exhaust conditioner which do not contribute to the explosion-proof characteristics of the exhaust system, including lines which connect the reserve water supply to the exhaust conditioner, opened.

(D) Twenty static tests, twenty dynamic tests at rated speed, and twenty dynamic tests at 50 percent of rated speed shall be conducted at the specified high or normal operating water level with all entrances in the exhaust conditioner (except the exhaust conditioner outlet) which do not contribute to the explosion-proof characteristics of the exhaust system, including lines which connect the reserve water supply to the exhaust conditioner, closed.

(iv) After successful completion of the explosion tests of the exhaust system, the minimum allowable low water level shall be determined by adding two inches to the lowest water level that passed the explosion tests.

(v) A determination shall be made of the maximum grade on which the exhaust conditioner can be operated retaining the flame arresting characteristics.

(b) *Acceptable performance.* The explosion tests shall not result in any of the following—

(1) Discharge of flame or glowing particles.

(2) Visible discharge of gas through gasketed joints.

(3) Ignition of the explosive mixture in the test chamber.

(4) Rupture of any part that affects the explosion-proof integrity.

(5) Excessive clearances along flame-arresting paths.

(6) Pressure exceeding 125 psig, unless the intake system or exhaust system has withstood a static pressure of twice the highest value recorded in the tests.

(7) Permanent distortion of any planar surface of the diesel power package exceeding 0.04-inch/linear foot.

(8) Permanent deformation exceeding 0.002-inch between the plates of spaced-plate flame arrester designs.

§ 7.101 Surface temperature tests.

(a) *Test procedures.* (1) Prepare for diesel power package testing as follows:

(i) Perform a detailed check of parts against the drawings and specifications submitted to MSHA under compliance with § 7.97 of this subpart to determine that the parts and drawings coincide.

(ii) Fill the coolant system with a mixture of equal parts of antifreeze and water, following the procedures specified in the application, § 7.97(a)(4) of this subpart.

(iii) Fill the exhaust conditioner to the high or normal operating water level and having a reserve water supply available, if applicable.

(2) Tests shall be conducted as follows:

(i) Adjust the liquid fuel rate of the injector pump of the diesel engine as specified in § 7.97(a)(3) of this subpart.

(ii) Install sufficient temperature measuring devices to determine the location of the highest coolant temperature. The temperature measuring device shall be accurate to +1 percent of the indicated reading or $\pm 5^\circ\text{F}$ ($\pm 3^\circ\text{C}$), whichever is greater.

(iii) Operate the engine at rated speed and maximum fuel delivery and with 0.5 ± 0.1 percent, by volume, of natural gas or methane in the intake air mixture until all parts of the engine, exhaust coolant system, and other components reach their respective equilibrium temperatures. The liquid fuel temperature into the engine shall be maintained at 100°F (38°C) $\pm 10^\circ\text{F}$ (5.5°C) and the intake air temperature shall be maintained at 70°F (21°C) $\pm 5^\circ\text{F}$ (2.7°C). If natural gas is used in the intake air, the content of methane and ethane shall total at least 98.0 percent, by volume, with nitrogen and propane the remainder.

(iv) Increase the coolant system temperatures until the highest coolant temperature is 205°F to 212°F (96°C to 100°C), or to the maximum temperature specified by the applicant, if lower.

(v) After all coolant system temperatures stabilize, operate the engine for 1 hour.

(vi) The ambient temperature shall be between 50°F (10°C) and 104°F (40°C) throughout the tests.

(b) *Acceptable performance.* The surface temperature of any external surface of the diesel power package shall not exceed 302°F (150°C) during the test.

§ 7.102 Exhaust gas cooling efficiency test.

(a) *Test procedures.* (1) Follow the procedures specified in § 7.101(a) of this subpart.

(2) Install a temperature measuring device to measure the exhaust gas temperature at discharge from the

exhaust conditioner. The temperature measuring device shall be accurate to ± 1 percent of the indicated reading or $\pm 5^\circ\text{F}$ ($\pm 3^\circ\text{C}$), whichever is greater.

(3) Determine the exhaust gas temperature at discharge from the exhaust conditioner before the exhaust gas is diluted with air.

(b) *Acceptable performance.* The exhaust gas temperature at discharge from the exhaust conditioner before the exhaust gas is diluted with air shall not exceed 170°F (76°C).

§ 7.103 Safety system control test.

(a) *Test procedures.* (1) Prior to testing, perform the tasks specified in § 7.101(a)(1) of this subpart and install sufficient temperature measuring devices to measure the highest coolant temperature and exhaust gas temperature at discharge from the exhaust conditioner. The temperature measuring device shall be accurate to ± 1 percent of the indicated reading or $\pm 5^\circ\text{F}$ ($\pm 3^\circ\text{C}$), whichever is greater.

(2) Determine the effectiveness of the coolant system temperature shutdown sensors which will automatically activate the safety shutdown system and stop the engine before the water temperature in the cooling jackets exceeds manufacturer's specifications or 212°F (100°C), whichever is lower, by operating the engine and causing the water in the cooling jackets to exceed the specified temperature.

(3) Determine the effectiveness of the temperature sensor in the exhaust gas stream which will automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas temperature exceeds 302°F (150°C), by operating the engine and causing the cooled exhaust gas to exceed the specified temperature.

(4) For systems using exhaust conditioners where the exhaust gas temperature at discharge does not exceed 170°F (76°C) under test conditions of § 7.100(a)(2) of this subpart, determine the effectiveness of the temperature sensor in the exhaust gas stream which will automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas temperature exceeds 185°F (85°C), with the engine operating at a high idle speed/no load condition. Temporarily disable the reserve water supply, if applicable, and any safety shutdown system control that might interfere with the evaluation of the operation of the exhaust gas temperature sensor. Prior to testing, set the water level in the exhaust conditioner to a level just above the minimum allowable low water level. Run the engine until the exhaust gas

temperature sensor activates the safety shutdown system and stops the engine.

(5) Determine the effectiveness of the low water sensor which will automatically activate the safety shutdown system and stop the engine at or above the minimum allowable low water level established from results of the explosion tests in § 7.100 of this subpart with the engine operating at a high idle speed/no load condition. Temporarily disable the reserve water supply, if applicable, and any safety shutdown system control that might interfere with the evaluation of the operation of the low water sensor. Prior to testing, set the water level in the exhaust conditioner to a level just above the minimum allowable low water level. Run the engine until the low water sensor activates the safety shutdown system and stops the engine. Measure the low water level. Attempt to restart the engine.

(6) Determine the effectiveness of the device in the intake system which is designed to shut off the air supply and stop the engine for emergency purposes with the engine operating at both a high idle speed/no load condition and an idle speed/no load condition. Run the engine and activate the emergency intake air shutoff device.

(7) Determine the total vacuum of the complete intake system, including the air cleaner, as measured between the intake flame arrester and the engine head with the engine operating as follows:

(i) At high idle speed/no load condition for normally aspirated engines.

(ii) At rated speed and maximum fuel delivery for turbocharged engines.

(8) Determine the total exhaust backpressure with the exhaust conditioner filled to the high or normal operating water level and with the engine operating as specified in § 7.103(a)(7) of this subpart.

(9) The starting mechanism shall be tested to ensure that engagement is not possible while the engine is running. Operate the engine and attempt to engage the starting mechanism.

(10) Where the lack of engine oil pressure must be overridden in order to start the engine, test the override to ensure that it does not override any of the safety shutdown sensors specified in § 7.98(i) of this subpart. After each safety shutdown sensor test specified in paragraphs (a)(2) through (a)(5) of this section, immediately override the engine oil pressure and attempt to restart the engine.

(b) *Acceptable performance.* Tests of the safety system controls shall result in the following:

(1) The coolant system temperature shutdown sensor shall automatically activate the safety shutdown system and stop the engine before the water temperature in the cooling jackets exceeds manufacturer's specifications or 212°F (100°C), whichever is lower.

(2) The temperature sensor in the exhaust gas stream shall automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas exceeds 302°F (150°C).

(3) The temperature sensor in the exhaust gas stream of the exhaust conditioner shall automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas exceeds 185°F (85°C).

(4) The low water sensor shall automatically activate the safety shutdown system and stop the engine at or above the minimum allowable low water level and prevent restarting of the engine.

(5) The emergency intake air shutoff device shall operate immediately when activated and stop the engine within 15 seconds.

(6) The total intake vacuum and the total exhaust backpressure shall not exceed the engine manufacturer's specifications.

(7) It shall not be possible to engage the starting mechanism while the engine is running.

(8) The engine oil pressure override shall not override any of the shutdown sensors.

§ 7.104 Internal static pressure test.

(a) *Test procedures.* (1) Isolate and seal each segment of the intake system or exhaust system to allow pressurization.

(2) Internally pressurize each segment of the intake system or exhaust system to four times the maximum pressure observed in each segment during the tests of § 7.100 of this subpart, or 150 psig \pm 5 psig, whichever is less. Maintain the pressure for a minimum of 10 seconds.

(3) Following the pressure hold, the pressure shall be removed and the pressurizing agent removed from the intake system or exhaust system.

(b) *Acceptable performance.* (1) The intake system or exhaust system, during pressurization, shall not exhibit—

(i) Leakage through welds and gasketed joints; or

(ii) Leakage other than along joints meeting the explosion-proof requirements of § 7.98(q) of this subpart.

(2) Following removal of the pressurizing agent, the intake system or exhaust system shall not exhibit any—

(i) Changes in fastening torque;

- (ii) Visible cracks in welds;
- (iii) Permanent deformation affecting the length or gap of any flame-arresting paths;
- (iv) Stretched or bent fastenings; or
- (v) Damaged threads of parts affecting the explosion-proof integrity of the intake system or exhaust system.

§ 7.105 Approval marking.

Each approved diesel power package shall be identified by a legible and permanent approval plate inscribed with the assigned MSHA approval number and securely attached to the diesel power package in a manner that does not impair any explosion-proof characteristics. The grade limitation of the exhaust conditioner shall be included on the approval marking.

§ 7.106 Post-approval product audit.

Upon request by MSHA, but not more than once a year except for cause, the approval-holder shall make an approved diesel power package available for audit at no cost.

§ 7.107 New technology.

MSHA may approve a diesel power package that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that the diesel power package is as safe as those which meet the requirements of this subpart.

§ 7.108 Power package checklist.

Each diesel power package bearing an MSHA approval plate shall be accompanied by a power package checklist. The power package checklist shall consist of a list of specific features that must be checked and tests that must be performed to determine if a previously approved diesel power package is in approved condition. Test procedures shall be specified in sufficient detail to allow evaluation to be made without reference to other documents. Illustrations shall be used to fully identify the approved configuration of the diesel power package.

Subpart G—Diesel Power Packages Intended for Use in Areas of Underground Coal Mines Where Permissible Electric Equipment is Not Required

§ 7.111 Purpose and effective date.

This subpart establishes the specific requirements for approval of diesel power packages intended for use in areas of underground mines where permissible electric equipment is not required. It is effective (60 days after the date of publication of the final rule in the Federal Register).

§ 7.112 Definitions.

The following definitions apply to this subpart.

Corrosion-resistant material. Material that has at least the corrosion-resistant properties of type 304 stainless steel.

Diesel power package. A diesel engine with an intake system, exhaust system, and a safety shutdown system installed.

Exhaust conditioner. A corrosion-resistant enclosure containing a cooling system, through which the exhaust gases pass.

Exhaust system. A system connected to the outlet of the diesel engine which includes the exhaust manifold, the exhaust pipe, the exhaust conditioner, the exhaust flame arrester, and any adapters between the exhaust manifold and exhaust flame arrester.

High idle speed/no load. The maximum no load speed specified by the engine manufacturer.

Idle speed/no load. The minimum no load speed specified by the engine manufacturer.

Intake system. A system connected to the inlet of the diesel engine which includes the intake manifold, the intake flame arrester, the emergency intake air shutoff device, the air cleaner, and all piping and adapters between the intake manifold and air cleaner.

Rated speed. The speed at which the engine manufacturer specifies the rated brake horsepower of the engine.

Safety shutdown system. A system which, in response to signals from various safety sensors, recognizes the existence of a potential hazardous condition and automatically shuts off the fuel supply to the engine.

§ 7.113 Application requirements.

(a) An application for approval of a diesel power package shall contain sufficient information to document compliance with the technical requirements of this subpart and include the following information:

(1) Drawings, specifications, and descriptions with dimensions (including tolerances) demonstrating compliance with the technical requirements of this subpart. The specifications and descriptions shall include the materials of construction and quantity.

(2) A general arrangement drawing showing the diesel power package and the location and identification of the intake system components, exhaust system components, safety shutdown system sensors, emergency intake air shutoff device, automatic fuel shutoff device, and the engine.

(3) Diesel engine specifications stating the MSHA approval number. Speed, horsepower, and fuel flow shall also be

included if different from the maximum rated condition in the engine approval.

(4) A schematic which includes: the location and identification of all water-cooled components, coolant lines, radiator, surge tank, temperature sensors, and orifices; arrows indicating proper flow direction; the height relationship of water-cooled components to the surge tank; and the proper procedure for filling the cooling system.

(5) A schematic showing the relative location and identification of components in the safety shutdown system.

(6) Specific component identification, or specific information including detail drawings that identify the characteristics of the cooling system, safety shutdown system and emergency intake air shutoff device that ensures compliance with the technical requirements.

(7) An assembly drawing showing the location and identification of all intake system components from the air cleaner to the engine head.

(8) An assembly drawing showing the location and identification of all exhaust system components from the engine head (excluding the dilution system).

(9) Detail drawings of the exhaust system components identified in paragraph (a)(8) of this section.

(10) A power package checklist which shall consist of a list of specific features that must be checked and tests that must be performed to determine if a previously approved diesel power package is in approved condition. Test procedures shall be specified in sufficient detail to allow the evaluation to be made without reference to other documents. Illustrations shall be used to fully identify the approved configuration of the diesel power package.

(11) A drawing list consisting of a complete list of those drawings and specifications which show the details of the construction and design of the diesel power package.

(b) Composite drawings specifying the required details of construction are acceptable instead of the individual detailed drawings listed in paragraph (a) of this section.

(c) All documents shall be titled, dated, numbered, and include the latest revision number.

(d) When all testing has been completed, the following information shall be submitted and become part of the approval documentation:

(1) The settings of any adjustable devices that are used to meet the performance requirements of this subpart.

(2) The coolant temperature sensor setting and exhaust gas temperature sensor setting that are used to meet the performance requirements of this subpart.

(3) A finalized version of the power package checklist.

§ 7.114 Technical requirements.

(a) The diesel power package shall use an engine approved under subpart E of part 7 of this chapter.

(b) The temperature of any external surface of the diesel power package shall not exceed 302 °F (150 °C) when tested in accordance with the surface temperature test in § 7.116 of this subpart. Diesel power package designs that use water jacketing to meet this requirement shall be tested in accordance with § 7.116. Diesel power packages using other techniques will be evaluated under the provisions of § 7.121 of this subpart. When using water-jacketed components, provisions shall be made for positive circulation of coolant; venting of the system to prevent the accumulation of air pockets, and effective activation of the safety shutdown system before the temperature of the coolant in the jackets exceeds the manufacturer's specifications or 212 °F (100 °C), whichever is lower.

(c) A means shall be provided to cool the exhaust gas such that the temperature of the exhaust gas at discharge from the diesel power package shall not exceed 302 °F (150 °C) when tested in accordance with the exhaust gas cooling efficiency test in § 7.117 of this subpart. A sensor shall be provided that activates the safety shutdown system before the exhaust gas exceeds 302 °F (150 °C) under test conditions specified in § 7.118(a)(3) of this subpart.

(d) The diesel power package shall be equipped with a safety shutdown system which will automatically shut off the fuel supply and stop the engine in response to signals from sensors indicating—

(1) The coolant temperature limit specified in § 7.114(b) of this subpart; or

(2) The exhaust gas temperature limit specified in § 7.114(c) of this subpart.

(e) The intake system shall be provided with the following features:

(1) The intake system shall include a device, operable from the equipment operator's compartment, to shut off the air supply to the engine for emergency purposes. Upon activation, the device must operate immediately and the engine shall stop within 15 seconds.

(2) The intake system shall include an air cleaner and service indicator. The air cleaner shall be sized and the service

indicator set in accordance with the engine manufacturer's recommendations.

(3) A connection shall be provided in the intake system for temporary attachment of a device to indicate the total vacuum in the system.

(f) The discharge from the engine crankcase breather shall be directed away from hot surfaces of the engine and exhaust system.

(g) A connection shall be provided in the exhaust system for temporary attachment of a device to indicate the total backpressure in the system.

§ 7.115 Critical characteristics.

The following critical characteristics shall be inspected or tested on each diesel power package to which an approval marking is affixed:

(a) Diesel engine approval marking.

(b) Fuel rate setting to ensure that it is appropriate for the intended application, or a warning tag shall be affixed to the fuel system notifying the purchaser of the need to make proper adjustments.

(c) Proper interconnection of the coolant system components and use of specified components.

(d) Proper interconnection of the safety shutdown system components and use of specified components.

(e) The inspections and tests described in the diesel power package checklist shall be performed and all requirements shall be met.

§ 7.116 Surface temperature tests.

(a) *Test procedures.* (1) Prepare for testing the diesel power package testing as follows:

(i) Perform a detailed check of parts against the drawings and specifications submitted under § 7.113 of this subpart to determine that the parts and drawings coincide.

(ii) Fill the coolant system with a mixture of equal parts of antifreeze and water, following the procedures specified in the application, § 7.113(a)(4) of this subpart.

(iii) Fill the exhaust conditioner to the high or normal operating water level and having a reserve water supply available, if applicable.

(2) Conduct the tests as follows:

(i) Adjust the liquid fuel rate of the injector pump of the diesel engine as specified in § 7.113(a)(3) of this subpart.

(ii) Install sufficient temperature measuring devices to determine the location of the highest coolant temperature. The temperature measuring device shall be accurate to ± 1 percent of the indicated reading or ± 5 °F (± 3 °C), whichever is greater.

(iii) Operate the engine at rated speed and maximum fuel delivery until all

parts of the engine, exhaust coolant system, and other components reach their respective equilibrium temperatures. The liquid fuel temperature into the engine shall be maintained at 100 °F (38 °C) ± 10 °F (5.5 °C) and the intake air temperature shall be maintained at 70 °F (21 °C) ± 5 °F (2.7 °C).

(iv) Increase the coolant system temperatures until the highest coolant temperature is 205 °F to 212 °F (96 °C to 100 °C), or to the maximum temperature specified by the applicant, if lower.

(v) After all coolant system temperatures stabilize, operate the engine for 1 hour.

(vi) The ambient temperature shall be between 50 °F (10 °C) and 104 °F (40 °C) throughout the tests.

(b) *Acceptable performance.* The surface temperature of any external surface of the diesel power package shall not exceed 302 °F (150 °C) during the test.

§ 7.117 Exhaust gas cooling efficiency tests.

(a) *Test procedures.* (1) Follow the procedures specified in § 7.116(a) of this subpart.

(2) Install a temperature measuring device to measure the exhaust gas temperature at discharge from the exhaust system. The temperature measuring device shall be accurate to ± 1 percent of the indicated reading or ± 5 °F (± 3 °C), whichever is greater.

(3) Determine the exhaust gas temperature at discharge from the exhaust system.

(b) *Acceptable performance.* The exhaust gas temperature at discharge from the exhaust system shall not exceed 302 °F (150 °C).

§ 7.118 Safety system controls tests.

(a) *Test procedures.* (1) Prior to testing, perform the tasks specified in § 7.116(a)(1) of this subpart and install sufficient temperature measuring devices to measure the highest coolant temperature and exhaust gas temperature at discharge from the exhaust system. The temperature measuring device shall be accurate to ± 1 percent of the indicated reading or ± 5 °F (± 3 °C), whichever is greater.

(2) Determine the effectiveness of the coolant system temperature shutdown sensors which will automatically activate the safety shutdown system and stop the engine before the water temperature in the cooling jackets exceeds manufacturer's specifications or 212 °F (100 °C), whichever is lower, by operating the engine and causing the

water in the cooling jackets to exceed the specified temperature.

(3) Determine the effectiveness of the temperature sensor in the exhaust gas stream which will automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas temperature exceeds 302 °F (150 °C) shall be determined by operating the engine and causing the cooled exhaust gas to exceed the specified temperature.

(4) Determine the effectiveness of the device in the intake system which is designed to shut off the air supply and stop the engine for emergency purposes with the engine operating at both a high idle speed/no load condition and an idle speed/no load condition. Run the engine and activate the emergency intake air shutoff device.

(5) Determine the total vacuum of the complete intake system, including the air cleaner, with the engine operating as follows:

(i) At high idle speed/no load condition for normally aspirated engines.

(ii) At rated speed and maximum fuel delivery for turbocharged engines.

(6) Determine the total exhaust backpressure with the exhaust conditioner filled to the high or normal operating water level, if applicable, and with the engine operating as specified in paragraph (a)(5) of this section.

(b) *Acceptable performance.* Tests of the safety system controls shall result in the following:

(1) The coolant system temperature shutdown sensor shall automatically activate the safety shutdown system and stop the engine before the water temperature in the cooling jackets exceeds manufacturer's specifications or 212 °F (100 °C), whichever is lower.

(2) The temperature sensor in the exhaust gas stream shall automatically activate the safety shutdown system and stop the engine before the cooled exhaust gas exceeds 302 °F (150 °C).

(3) The emergency intake air shutoff device shall operate immediately when activated and stop the engine within 15 seconds.

(4) The total intake vacuum and the total exhaust backpressure shall not exceed the engine manufacturer's specifications.

§ 7.119 Approval marking.

Each approved diesel power package shall be identified by a legible and permanent approval plate inscribed with the assigned MSHA approval number and securely attached to the diesel power package.

§ 7.120 Post-approval product audit.

Upon request by MSHA, but not more than once a year except for cause, the approval-holder shall make an approved diesel power package available for audit at no cost.

§ 7.121 New technology.

MSHA may approve a diesel power package that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that the diesel power package is as safe as those which meet the requirements of this subpart.

§ 7.122 Power package checklist.

Each diesel power package bearing an MSHA approval plate shall be accompanied by a power package checklist. The power package checklist shall consist of a list of specific features that must be checked and tests that must be performed to determine if a previously approved diesel power package is in approved condition. Test procedures shall be specified in sufficient detail to allow evaluation to be made without reference to other documents. Illustrations shall be used to fully identify the approved configuration of the diesel power package.

PART 70—[AMENDED]

B. It is proposed to amend 30 CFR part 70 as follows:

The heading of part 70 is revised to read as follows: "HEALTH STANDARDS—UNDERGROUND COAL MINES."

2. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957 and 961.

3. Subparts G—S are reserved and a new subpart T is added to part 70 to read as follows:

* * * * *

Subpart T—Diesel-Powered Equipment Exposure Monitoring

Sec.

70.1900 Exposure monitoring—general requirements.

70.1901 Personal exposure monitoring—general requirements.

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Subpart T—Diesel-Powered Equipment Exposure Monitoring

§ 70.1900 Exposure monitoring—general requirements.

(a) Weekly area samples of CO, NO, and NO₂ shall be taken in the immediate return airways of each split of air where diesel equipment is used in a mine.

(1) When fuel is used which contains 0.25 percent sulfur or less, the mine

operator shall provide a certified statement as to the sulfur content of the fuel.

(2) When fuel is used which contains more than 0.25 percent of sulfur, weekly area samples of SO₂ shall be taken.

(b) Weekly exposure monitoring of the gases listed in paragraph (a) of this section shall be conducted pursuant to § 72.200(c), (d), (e), and (f) ¹ of this title and shall be collected during periods when contaminant concentrations are representative of peak exposures to miners at risk, and when required under § 72.200(a)(1) of this title.

(c) When the results of sampling conducted under this section exceed 50 percent of the permissible exposure limit concentration listed in Table B-1, § 72.100 of this title, personal exposure monitoring shall be conducted according to § 70.1901 of this part.

§ 70.1901 Personal exposure monitoring—general requirements.

(a) The exposure of all miners shall be maintained at or below the appropriate permissible exposure limit. When work shifts are greater than 8 hours in duration, 8-hour time weighted averages shall be adjusted proportionately in accordance with § 72.100(b) of this title.

(b) When the results of area sampling conducted in accordance with § 70.1900 of the part exceed 50 percent of the specified permissible exposure limit listed in Table B-1, § 72.100 of this title, the personal exposure of miners that are representative of the affected miners' exposures shall be monitored. This monitoring shall be conducted according to § 72.200 (c), (d), (e), (f), and (g) of this title.

(c) When personal monitoring results indicate levels greater than 75 percent of the appropriate permissible exposure limit, personal monitoring shall be conducted on each operational shift of the area affected. Monitoring shall be conducted according to § 72.200 (c), (d), (e), (f) and (g) of this title.

(d) When personal exposure monitoring results indicate levels less than 100 percent of the appropriate permissible exposure limit with 95 percent confidence, the area sampling required under § 70.1900 of this part shall be reinstituted.

PART 75—[AMENDED]

C. It is proposed to amend 30 CFR part 75 as follows:

¹ Proposed exposure monitoring requirements under § 72.200 and permissible exposure limits under § 72.100 have been previously published in the Federal Register on August 29, 1989 (54 FR 35760) under MSHA's air quality proposed rule.

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. A new § 75.390 is added to subpart D as follows:

Subpart D—Ventilation

§ 75.390 Ventilating air where diesel-powered equipment is operated.

(a) The minimum quantities of air in any split where any individual unit of diesel-powered equipment is being operated shall be at least that specified on the approval plate for that equipment.

(b) The minimum quantities of air in any split where any diesel-powered equipment is operated shall be specified in the mine ventilation plan as follows:

(1) Where multiple diesel units are regularly operated, the minimum quantity shall be at least 100 percent of the highest approval plate air quantity plus 75 percent of the next highest quantity plus 50 percent of the approval plate quantity of each additional unit operating in that split. Such air quantity shall be maintained in the last open crosscut of each working section or in the intake splits of longwall sections. These quantities shall also be maintained when face equipment is being installed or removed.

(2) If the particulate index indicates that air quantities in excess of those required in paragraph (b)(1) of this section are required to maintain particulate levels below applicable standards, minimum quantities shall be determined considering the particulate index with particulate indices for multiple units being additive.

(3) The following equipment may be excluded in the calculations required by paragraph (b) (1) or (2) of this section:

(i) Equipment meeting the requirements of § 75.1908 of this part, except diesel-powered air compressors which are regularly used.

(ii) Equipment that discharges its exhaust directly into a return air course.

(iii) Other equipment having duty cycles such that the emissions would not significantly affect the exposure of miners in that split if such equipment exclusion is approved by the District Manager.

(4) Modification of the required ventilation quantities, except those specified in paragraph (a) of this section, may be approved if the results of a comprehensive personal monitoring program which represents the affected area of the mine indicate that exposure levels are below 75 percent of the applicable contaminant standards with

95 percent confidence. The following information shall be submitted to the District Manager for consideration of approval of the modified air quantity:

(i) The minimum quantity being proposed.

(ii) The equipment operating limitations and conditions and area of the mine for which the modification applies.

(iii) The sampling plan including the occupations sampled, actual air quantities during the monitoring, contaminants sampled, and the sampling and analytical methods used including the accuracies and precisions.

(iv) An evaluation of the results, including actual data collected, demonstrating the exposure levels with 95 percent confidence.

(v) The records required by § 70.1901 of this chapter.

3. A new subpart T is added to part 75 to read as follows:

Subpart T—Diesel-Powered Equipment

Sec.

75.1900 Definitions.

75.1901 Diesel fuel requirements.

75.1902 Underground diesel fuel storage facilities—general requirements.

75.1903 Diesel fuel storage facilities; construction and safety precautions.

75.1904 Underground diesel fuel storage tanks.

75.1905 Transfer of diesel fuel.

75.1906 Containers for the transport of diesel fuel.

75.1907 Approved diesel-powered equipment.

75.1908 Limited class equipment—scope.

75.1909 Limited class equipment design and performance requirements.

75.1910 Stationary diesel-powered equipment.

75.1911 Fire suppression systems for mobile diesel-powered equipment and fuel transportation units.

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Subpart T—Diesel-Powered Equipment

§ 75.1900 Definitions.

The following definitions apply in this subpart.

Fixed underground diesel fuel storage facility. A facility designed and

constructed to remain at one location for an extended period of time for the storage or dispensing of diesel fuel, and which does not move as mining progresses.

Mobile underground diesel fuel storage facility. A facility designed and constructed to provide for the short-term storage or dispensing of diesel fuel and which moves as mining progresses.

§ 75.1901 Diesel fuel requirements.

Diesel-powered equipment shall be used underground only with low volatile hydrocarbon fuel classified as ASTM D975 No. 2D diesel fuel and which has a flash point of 125 °F or greater at standard temperature and pressure.

§ 75.1902 Underground diesel fuel storage facilities—general requirements.

(a) No more than 1000 gallons of diesel fuel shall be stored in a fixed underground diesel fuel storage facility.

(b) No more than 500 gallons of diesel fuel shall be stored in a mobile underground diesel fuel storage facility.

(c) Fixed and mobile underground diesel fuel storage facilities shall be located—

- (1) At least 100 feet from shafts, slopes, shops, explosives magazines;
- (2) At least 25 feet from trolley wires, haulageways, power cables, and electric equipment not necessary for the operation of the storage facilities; and,
- (3) In an area as dry as practicable.

§ 75.1903 Diesel fuel storage facilities; construction and safety precautions.

(a) Fixed and mobile underground diesel fuel storage facilities shall be—

(1) Constructed of noncombustible materials and provided with a means for automatic enclosure;

(2) Ventilated directly into the return air course using noncombustible materials;

(3) Equipped with an automatic fire suppression system complying with § 75.1912 of this part;

(4) Equipped with at least two portable 20 pound multipurpose dry chemical type fire extinguishers;

(5) Marked with conspicuous signs designating combustible liquid storage.

(b) Fixed diesel fuel underground storage facilities shall be provided with a drain system and a sump capable of holding 150 percent of the maximum capacity of the fuel storage system.

(c) Welding or cutting other than that performed in accordance with paragraph (d) of this section shall not be done within 50 feet of a diesel fuel storage facility.

(d) When it is necessary to weld, cut, or solder pipelines, cylinders, tanks, or containers that may have contained

diesel fuel, these practices shall be followed:

(1) Cutting or welding shall not be performed on or within containers or tanks that have contained combustible or flammable materials until such containers or tanks have been thoroughly purged and cleaned or inerted and a vent or opening is provided to allow for sufficient release of any buildup pressure before heat is applied.

(2) Diesel fuel shall not be allowed to enter pipelines or containers that have been welded, soldered, brazed, or cut until the metal has cooled to ambient temperature.

§ 75.1904 Underground diesel fuel storage tanks.

(a) Unless located in dry areas, underground diesel fuel storage facility tanks shall be—

(1) Placed on noncombustible supports so that the tanks are at least 6 inches above water or wet bottom, or

(2) Constructed of noncorrosive material.

(b) Underground diesel fuel storage tanks shall have the following:

(1) Devices for venting.

(2) Self-closing caps.

(3) Vent pipes at least as large as the fill or withdrawal connection, whichever is larger, but not less than 1¼ inch nominal inside diameter.

(4) Liquid tight connections for all tank openings that are—

(i) Identified by conspicuous markings; and

(ii) Closed when not in use.

(5) Vent pipes that drain toward the tank without sagging and that are higher than the fill pipe opening.

(6) Shutoff valves located within 1 inch of the tank shell on each connection through which liquid can normally flow.

(c) When tanks are provided with openings for manual gauging, liquid tight caps or covers shall be provided and shall be kept closed when not open for gauging.

(d) Tanks located in fixed underground diesel fuel storage facilities shall be supported by concrete, masonry, protected steel, or equivalent supports, and except for steel saddles less than 12 inches from the floor, steel supports shall be protected by materials having a fire resistance rating of not less than two hours.

(e) Before being placed in service, tanks shall be tested for strength and leakage at a pressure equal to the static head.

(f) Tanks located in fixed underground diesel fuel storage facilities shall be provided with an automatic closing,

heat-actuated valve on each withdrawal connection below the liquid level, except for connections used for emergency disposal.

§ 75.1905 Transfer of diesel fuel.

(a) When diesel fuel is transferred by means of a pump and a hose equipped with a nozzle containing a self-closing valve, a powered pump may be used only if—

(1) The hose is equipped with a nozzle containing a self-closing valve without a latch-open device; and

(2) The pump is equipped with an accessible emergency shutoff switch.

(b) Diesel fuel shall not be transferred using compressed gas.

(c) Diesel fuel shall not be transferred to the fuel tank of diesel-powered equipment while its engine is running.

(d) Diesel fuel piping systems shall be designed and operated as dry systems unless an automatic shutdown is incorporated that activates an alarm system and prevents accidental loss or spillage of fuel.

(e) All piping, valves and fittings shall be—

(1) Capable of withstanding working pressures and stresses;

(2) Capable of withstanding four times the static pressures;

(3) Compatible with diesel fuel; and

(4) Maintained in a manner which prevents leakage.

(f) Vertical pipelines shall have manual shutoff valves installed at the surface filling point, and at the underground discharge point.

(g) If fuel lines are not buried in the ground, shutoff valves shall be located every 300 feet.

(h) Shutoff valves shall be installed at each branch line where the branch line joins the main line.

(i) Diesel fuel piping systems shall be used only to transport fuel from the surface directly to a fixed underground diesel fuel storage facility.

(j) When boreholes are used, the diesel fuel piping system shall not be located in a borehole with electric power cables.

(k) Diesel fuel piping systems located in entries shall not be located on the same side of the entry as electric cables or powerlines.

(l) Diesel fuel piping systems shall be protected and located to prevent physical damage.

§ 75.1906 Containers for the transport of diesel fuel.

(a) Diesel fuel shall be transported only in containers specifically designed for the transport of diesel fuel.

(b) No more than one safety can, conspicuously marked, shall be transported on a vehicle at any time.

(c) Containers other than safety cans used to transport diesel fuel shall be provided with the following:

(1) Devices for venting.

(2) Self-closing caps.

(3) Vent pipes at least as large as the fill or withdrawal connection, whichever is larger, but not less than 1¼ inch nominal inside diameter.

(4) Liquid tight connections for all container openings that are—

(i) Identified by conspicuous markings; and

(ii) Closed when not in use.

(5) Shutoff valves located within 1 inch of the tank shell on each connection through which liquid can normally flow.

(d) When tanks are provided with openings for manual gauging, liquid tight caps or covers shall be provided and shall be kept closed when not open for gauging.

(e) Containers used for the transport of diesel fuel shall not exceed a capacity of 500 gallons.

(f) Containers, other than safety cans, used for the transport of diesel fuel shall be permanently fixed to the transportation unit.

(g) Diesel fuel shall not be transported on conveyor belts.

(h) When transporting diesel fuel in containers other than safety cans a fire extinguisher shall be provided on each end of the transportation unit. The fire extinguishers shall be multipurpose type dry chemical fire extinguishers containing a nominal weight of 20 pounds.

(i) Diesel fuel transportation units shall have a fire suppression system which meets the requirements of § 75.1911 of this part.

(j) When the distance between a diesel fuel transportation unit and an energized trolley wire at any location is less than 12 inches, the requirements of § 75.1003-2 of this part shall be followed.

(k) Unattended diesel fuel transportation units shall be parked only in fixed or mobile underground diesel fuel storage facilities.

§ 75.1907 Approved diesel-powered equipment.

(a) All diesel-powered equipment taken underground, except equipment meeting the requirements of §§ 75.1909 or 75.1910 of this part, shall be approved under subparts H and I¹ of part 7 of this

¹ Approval requirements for diesel equipment, as a unit, are currently under development. Public

title or meet the alternative requirements set forth below.

(1) Only diesel-powered equipment approved under subpart H of part 7 or part 36 of this title shall be used where permissible electric equipment is required.

(2) Any diesel-powered equipment approved under part 36 of this title shall be provided with additional safety features in accordance with the following time schedules:

(i) Upon the effective date of this section, this equipment shall have a power package that limits surface temperatures to those specified in subpart F of part 7 of this title.

(ii) As of six months after the effective date of this section, this equipment shall have a fire suppression system installed which meets the requirements of § 75.1910 of this part.

(iii) As of 24 months after the effective date of this section, this equipment shall have a particulate index and dilution air quantity determined in accordance with subpart E of part 7 of this title.

(3) Self-propelled and portable attended diesel-powered equipment used where nonpermissible electric equipment is permitted which is not approved in accordance with subparts H or I of part 7 or part 36 of this title shall be used in accordance with the following time schedules:

(i) As of 12 months after the effective date of this section, this equipment must meet the requirements of § 75.1909 of this part, except that such equipment does not need an engine approved in accordance with subpart E of part 7 of this title.

(ii) As of 24 months after the effective date of this section, diesel-powered equipment except that equipment meeting the requirements of § 75.1908 of this part, shall use a power package meeting the requirements of subparts F or G of part 7 of this title.

(iii) As of 24 months after the effective date of this section, equipment meeting the requirements of § 75.1908 of this part must have an engine approved in accordance with subpart E of part 7 of this title.

(iv) An operator may apply to the Director of Technical Support, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203 for approval of the extended use of locomotives which do not have a power package approved pursuant to subpart F or G of part 7 of

this title. The Director of Technical Support may approve such extended use if approved power packages suitable for the mine conditions and locomotive design are not available. The approval will be limited to the time until such technology is available. The approval may include such additional safety features, administrative procedures, and operating practices as necessary to achieve protection from fires and reduce exposure to exhaust contaminants.

(4) As of 60 months after the effective date of this section, only new diesel-powered equipment approved pursuant to subparts H or I of part 7 of this title or meeting the requirements of §§ 75.1909 or 75.1910 of this part shall be introduced in underground coal mines.

(b) Diesel-powered ambulances and firefighting equipment shall constitute a special class of equipment that shall only be permitted for use underground according to the mine evacuation plan required under § 75.1101-23 of this part.

(c) As of 12 months after the effective date of this section, all stationary diesel-powered equipment shall meet the requirements specified in § 75.1910 of this part with the exception of the requirement for a certified power package pursuant to subpart F or G of part 7 of this title.

(d) As of 24 months after the effective date of this section, all stationary diesel-powered equipment shall meet the requirements specified in § 75.1910 of this part.

§ 75.1908 Limited class equipment—scope.

(a) Only diesel-powered equipment meeting the requirements of this section shall be considered limited class equipment which may be used in accordance with § 75.1907(a)(2) of this part. This equipment shall—

(1) Use engines of less than 90 horsepower and not be turbocharged;

(2) Not use hydraulic systems;

(3) If self-propelled, have a vehicle weight of less than 6,000 pounds;

(4) If portable, be limited to compressors and welders.

(b) Altitude compensation devices may be used. For limited class equipment using altitude compensating devices, fuel injection rates shall be tested and certified by the operator as to approval compliance upon installation of the altitude compensation device or when maintenance of the fuel injection pump is performed.

§ 75.1909 Limited class equipment design and performance requirements.

(a) Limited class equipment shall have the following:

(1) An engine approved under subpart E of part 7 of this title.

(2) A fire suppression system designed and installed pursuant to § 75.1911 of this part.

(3) A fuel system specifically designed for diesel fuel meeting the following requirements:

(i) A fuel tank that is substantially constructed and protected from collision damages. The fuel tank shall be of leakproof construction. A drain plug shall be provided. A vent opening shall be provided that maintains atmospheric pressure in the tank. The size of the vent shall prevent fuel from splashing out of the vent opening. A self-closing or tethered filler cap shall be used. The tank, filler and vent shall be located so that any spillage during refueling, or leaks, will not contact hot engine surfaces.

(ii) Fuel line piping shall be metal and clamped. Location of the primary fuel lines shall be such that leaks do not contact hot surfaces. The fuel lines shall be separated from electrical wiring and protected from damage in ordinary use.

(iii) A manual shutoff valve shall be installed in the fuel system near the tank.

(iv) Fuel filters and a water strainer shall be provided.

(4) A sensor to monitor the temperature and provide a visual warning of an overheated cylinder head on air cooled engines.

(5) A temperature sensor located in the engine compartment that automatically activates an intake air shutdown device to stop the engine before the engine compartment temperature exceeds the activation temperature of the fire suppression system.

(6) Electrical circuits and components on equipment with storage batteries and integral charging systems shall conform to the following:

(i) Each electric conductor from the battery to the starting motor shall be protected against short circuit by fuses or other circuit interrupting devices placed as near as practicable to the battery terminals.

(ii) Fuses or other automatic circuit-interrupting devices shall be inserted in each conductor of all branch circuits that are connected to the main circuit between the battery and charging generator. Headlight circuits and circuits for instruments and instrument panel lights are considered as being branch circuits.

(iii) The electrical system shall be equipped with a circuit-interrupting device by means of which all power conductors can be deenergized. The

comments and suggestions on the approach to be taken are solicited in an Advance Notice of Proposed Rulemaking, published elsewhere in today's Federal Register. MSHA intends that when promulgated, as Subparts I and J, these approval requirements would be made applicable to diesel powered equipment in accordance with § 75.1907.

device shall be located as close as practicable to the battery terminals. A manually operated controller will not be acceptable as a service switch. Circuit-interrupting devices and other controls shall be so designed that they can be operated without opening any compartment in which they may be enclosed. These devices shall not automatically reset after being actuated and shall meet the applicable requirements of § 75.520 of this part. All magnetic circuit-interrupting devices shall be mounted in a manner to preclude the possibility of their closing by gravity.

(iv) Each motor and charging generator shall be protected by an automatic overcurrent device. One protective device will be acceptable when two motors of the same rating operate simultaneously and perform virtually the same duty.

(v) Overload and short circuit protection shall be provided for electric circuits and components in accordance with §§ 75.518 and 75.518-1 of this part.

(vi) Electric conductors shall meet the applicable requirements of §§ 75.513 and 75.513-1 of this part. Each ungrounded conductor shall have insulation compatible with the impressed voltage. Insulation shall be selected with special reference to its ability to resist deterioration from engine heat and oil. Conductors for equipment or accessories added to a vehicle's electrical system, after manufacture, shall not be smaller than No. 14 AWG in size.

(vii) All wiring shall have adequate mechanical and electrical protection to minimize damage to the cable that might result in short circuits.

(viii) Sharp edges and corners shall be removed at all points where there is a possibility of damaging wires, cables, or conduits by cutting or abrasion. Cables within a battery box shall be protected against abrasion of the insulation. In addition, wiring shall be installed in accordance with § 75.515 of this part, as applicable.

(ix) All electrical connections and splices shall meet the applicable requirements of § 75.514 of this part. Only bolted connectors may be used on battery terminals.

(x) The battery shall be secured to prevent movement and shall be protected from external damage by position, or be enclosed in a box. Insulation shall be provided to prevent battery terminals from contacting conducting surfaces. Batteries that are not protected from external damage by position shall be enclosed in a box.

(xi) A battery box, including the cover, shall be constructed of steel with

a minimum thickness of 3/16-inch. Materials other than steel that provide equivalent strength will be considered.

(xii) Battery-box covers shall be lined with a flame-resistant insulating material, permanently attached to the underside of the cover, unless equivalent protection is provided. Battery-box covers shall be provided with a means for securing them in closed position. At least 1/2 inch of airspace shall be provided between the underside of the cover and the top of the battery, including terminals.

(xiii) Battery boxes shall be provided with ventilation openings to prevent the accumulation of flammable or toxic gases or vapors within the battery box. The size and locations of openings for ventilation shall prevent direct access to battery terminals.

(xiv) The battery shall be insulated from the battery-box walls and supported on insulating materials. Insulating materials that may be subject to chemical reaction with electrolyte shall be treated to resist such action.

(xv) Drainage holes shall be provided in the bottom of each battery box.

(7) Adequate guarding to protect fuel and electric lines when such lines pass near rotating parts.

(8) Reflectors or warning lights mounted on the equipment which can be readily seen in all directions.

(b) Self-propelled limited class equipment shall have the following features in addition to those listed in paragraph (a) of this section:

(1) An audible warning device conveniently located near the operator.

(2) Service brakes for each wheel of the vehicle such that failure of one brake line shall not result in a complete loss of service braking capability.

(3) Service brakes that safely bring the fully loaded vehicle to a complete stop on the maximum grade on which it is operated.

(4) A parking brake that holds the equipment stationary despite any contracting of the brake parts, exhaustion of any nonmechanical source of energy or leakage.

(5) Headlights, tail lights and back-up lights.

(i) Units normally operated in both directions shall be equipped with headlights for both directions.

(ii) Lights shall be protected from accidental damage.

(c) Portable limited class equipment shall have the following features in addition to those listed in paragraph (a) of this section:

(1) Sensors to monitor the operation of limited class portable equipment and stop the engine when an equipment

malfunction would result in the creation of a hazardous condition.

(2) A means to prevent inadvertent movement of the equipment.

(3) Safety chains or other suitable secondary connections on equipment that is being towed.

(4) One portable 20-pound multipurpose fire extinguisher on each unit.

(d) Portable limited class equipment shall not be operated unattended.

§ 75.1910 Stationary diesel-powered equipment.

(a) Unattended stationary diesel-powered equipment shall not be permitted where permissible electric equipment is required.

(b) Stationary diesel-powered equipment shall have the following:

(1) A diesel power package approved under subpart F or G of part 7 of this title.

(2) A fuel system constructed in accordance with § 75.2909(a)(3) of this part.

(3) A maximum fuel supply limited to that needed for one shift operation unless the storage facility and tank are constructed in accordance with §§ 75.1902, 75.1903 and 75.1904 of this part and are separated from the stationary diesel-powered equipment by a noncombustible barrier.

(c) Stationary diesel-powered equipment shall be located in a noncombustible enclosure vented directly to the return air course. An automatic self-closing door may be used to form one side of the enclosure. Stationary diesel-powered equipment shall have the following:

(1) A fire suppression system designed and installed according to § 75.1912 of this part.

(2) A means to shut down the diesel engine from the surface and prevent restarting. The remote shutdown shall be designed and installed to shut the engine down if the system is not operating.

(3) A methane monitor that automatically activates an engine intake air shutdown device at 1.0 percent methane concentration and which prevents restarting. The methane monitor shall be placed to take a representative sample of the atmosphere in the noncombustible enclosure.

(d) Unattended stationary diesel-powered equipment shall not be permitted in the primary intake escapeway.

(e) Exhaust shall be discharged directly into the return air course.

(f) A spark arrester shall be provided to eliminate sparks before the exhaust air enters the return air stream.

(g) All hydraulic lines shall be mounted to protect them against damage in ordinary use, and they shall be routed to prevent leaks from contacting hot surfaces.

§ 75.1911 Fire suppression systems for mobile diesel-powered equipment and fuel transportation units.

(a) An automatic multipurpose dry powder type fire suppression system suitable for the intended application and listed or approved by a nationally recognized independent testing laboratory shall be installed.

(1) The system shall be installed in accordance with the manufacturer's specifications and the limitations of the listing or approval.

(2) The system shall be installed in a protected location or guarded to minimize physical damage from routine vehicle operations.

(3) Suppressant agent distribution tubing or piping shall be secured and protected against damage, including pinching, crimping, stretching, abrasion, and corrosion.

(4) Discharge nozzles shall be positioned and aimed for maximum fire suppression effectiveness in the protected areas. Nozzles shall also be protected against the entrance of foreign materials such as mud, coal dust, or rock dust which could prevent proper discharge of suppressant agent.

(b) The fire suppression system shall provide automatic fire detection and suppression for the following:

(1) The engine compartment and battery areas and air compressors for limited class equipment meeting the requirements of § 75.1908 of this part.

(2) The engine, transmission, hydraulic pumps and tanks, fuel tanks, exposed brake units, air compressors and battery areas on all other mobile diesel-powered equipment.

(3) Fuel containers and electric panels or controls used during fuel transfer operations on fuel transportation units.

(c) The fire suppression system shall include a system fault and fire alarm annunciator which can be seen and heard by the equipment operator.

(d) The fire suppression system shall provide for automatic engine shutdown. Engine shutdown and discharge of suppressant agent may be delayed for a maximum of 15 seconds after the fire alarm annunciator alerts the operator.

(e) At least two manual actuators shall be provided with at least one manual actuator at each end of the equipment. If the equipment is provided with an operator's compartment, one of

the mechanical actuators shall be located in the compartment within easy reach of the operator.

(f) The fire suppression system shall remain operative in the event of engine shutdown, equipment electrical system failure, or failure of any other equipment system.

(g) The electrical components of each fire suppression system installed on equipment used where permissible electric equipment is required shall be permissible or intrinsically safe and such components shall be maintained in permissible or intrinsically safe condition.

(h) If electrically operated, the detection and actuation circuits shall be monitored and provided with status indicators showing power and circuit continuity. If not electrically operated, a means shall be provided to indicate the functional readiness status of the system.

(i) All fire suppression devices shall be visually inspected at least once each week by a person qualified to make such inspections.

(j) Each fire suppression device shall be tested and maintained in accordance with the requirements specified in § 75.1100 of this part, as applicable.

(k) A record shall be maintained of the inspections required by this section. The record of the weekly inspections shall be maintained at an appropriate location for each fire suppression device.

(1) All miners normally assigned to the active workings of the mine shall be instructed about the hazards inherent to the operation of the fire suppression devices installed and, where appropriate, the safeguards available for each device.

§ 75.1912 Fire suppression systems for diesel fuel storage areas and stationary diesel-powered equipment.

(a) An automatic multipurpose dry-powder type fire suppression system suitable for the intended application and listed or approved by a nationally recognized independent testing laboratory shall be installed.

(1) Inert or halogenated gas suppressant agents may be used only in unoccupied and enclosed areas where the use of such suppressants would not pose a toxic hazard to persons.

(2) Alternate types of fire suppression systems shall be approved in accordance with § 75.1107-13 of this part.

(3) The system shall be installed in accordance with the manufacturer's specifications and the limitations of the listing or approval.

(4) The system shall be installed in a protected location or guarded to minimize physical damage from routine vehicle operations.

(5) Suppressant agent distribution tubing or piping shall be secured and protected against damage, including pinching, crimping, stretching, abrasion, and corrosion.

(6) Discharge nozzles shall be positioned and aimed for maximum fire suppression effectiveness in the protected areas. Nozzles must also be protected against the entrance of foreign materials such as mud, coal dust, and rock dust, that could prevent proper discharge of suppressant agent.

(b) The fire suppression system shall provide automatic fire detection and suppression for the following areas:

(1) The engine, hydraulic pumps and tanks, fuel tanks, battery areas and the stationary equipment being powered if such equipment poses a fire hazard.

(2) The fuel storage tanks, containers, safety cans, pumps, electrical panels and control equipment in fuel storage areas.

(c) Audible and visual alarms to warn of fire or system faults shall be provided at the protected area and at a surface location which is always staffed when personnel are underground who could be endangered by a fire. A means shall also be provided for warning all endangered personnel in the event of fire.

(d) Fire suppression systems shall include two manual actuators located as follows:

(1) At least one within the fuel storage facility or noncombustible enclosure housing stationary equipment.

(2) At least one a safe distance away from the storage facility or equipment enclosure and located in intake air.

(e) The fire suppression system shall remain operative in the event of electrical system failure or engine shutdown.

(f) If electrically operated, the detection and actuation circuits shall be monitored and provided with status indicators showing power and circuit continuity. If not electrically operated, a means shall be provided to indicate the functional readiness status of the system.

(g) Fire suppression devices shall be visually inspected at least once each week by a person qualified to make such inspections.

(h) Each fire suppression device shall be tested and maintained in accordance with the requirements specified in § 75.1100 of this part as applicable.

(i) A record shall be maintained of the inspections required by this section. The

record of the weekly inspections may be maintained at an appropriate location for each fire suppression device.

(j) All miners normally assigned to the active workings of the mine shall be instructed about any hazards inherent to the operation of all fire suppression devices installed and, where appropriate, the safeguards available for each device.

§ 75.1913 Starting aids.

(a) When not in use containers for volatile fuel starting aids shall be stored in a fire proof enclosure.

(b) Volatile fuel starting aids shall not be used or taken into areas where permissible equipment is required.

(c) Volatile fuel starting aids shall be used in accordance with the specific recommendations in the engine manufacturer's maintenance and operation manual.

(d) Volatile fuel starting aids shall not be used in the presence of open flames, or burning flame safety lamps, or when welding and cutting.

(e) Volatile fuels starting aids shall not be used in any area where 1.0 percent concentration of methane is detected.

(f) Compressed oxygen or compressed flammable gases shall not be connected to diesel air-start systems.

§ 75.1914 Maintenance of diesel-powered equipment.

(a) Diesel-powered equipment shall be maintained in approved and safe condition or removed from service.

(1) Maintenance and repairs of approved features of diesel-powered equipment shall be made only by a person qualified in accordance with § 75.1915 of this part.

(2) The water scrubber system shall be drained and flushed at least once on each shift that the diesel equipment is operated.

(3) The intake air filter shall be replaced or serviced when dirty or when the intake air pressure drop device so indicates.

(b) Mobile diesel-powered equipment that is to be used during a shift shall be inspected by the equipment operator before being placed in operation. Equipment defects affecting safety shall be reported to the mine operator.

(c) All diesel-powered equipment shall be examined and tested weekly by a person qualified in accordance with § 75.1915 of this part.

(1) Examinations and tests shall be conducted in accordance with approved checklists.

(2) Persons performing weekly examinations and tests of diesel-powered equipment shall certify by

initials and date that the examination and tests were performed.

(3) Certifications shall be retained for at least one year at a surface location at the mine.

(d) The mine operator shall develop and implement written standard operating procedures for testing and evaluating, on a weekly basis, the undiluted exhaust emissions of diesel engines in use underground. The procedures shall include the following:

(1) The method of achieving a repeatable loaded engine operating condition for each type of equipment.

(2) Sampling and analytical methods which include calibration of instrumentation capable of accurately detecting carbon-monoxide in the expected concentrations.

(3) Evaluation and interpretation of the results.

(4) The concentration or changes in concentration of carbon monoxide that will indicate a change in engine performance. Carbon monoxide concentrations shall not exceed 2,500 parts per million.

(5) The designation and training of the individual to perform the test.

(6) The maintenance and retention of necessary records.

§ 75.1915 Training and qualification of diesel mechanics.

(a) A diesel mechanic shall be qualified to perform maintenance and repairs of approved features of diesel equipment as required by § 75.1914 of this part only after successfully completing a training and qualification program, including an examination, developed by the mine operator and approved by MSHA as meeting the requirements of this section.

(b) The examination shall require the applicant to demonstrate that the applicant is capable of maintaining the equipment in approved condition with acceptable emissions and in safe operating condition. Successful completion of any written portion of a qualification examination shall require a score of 80 percent.

(c) A qualified diesel mechanic shall complete annual retraining in accordance with the approved program once every 12 months.

(d) An approved training and qualification program shall contain the following:

(1) A description of the course content, materials and teaching methods to be used for initial training and retraining.

(2) A copy of the qualification examination.

(3) For retraining, a copy of the evaluation program to be used to assess

the knowledge, skills and ability of the mechanic to perform the required duties in accordance with applicable requirements.

(e) Courses in a training and retraining program shall—

(1) Be presented by a qualified diesel mechanic or other instructor determined by MSHA to be qualified;

(2) Be of sufficient length and content to prepare or maintain a person to perform the duties of a diesel mechanic in accordance with all applicable regulatory requirements;

(3) Address each piece of diesel equipment in use at the mine; and

(4) Address, at a minimum, the following areas of instruction:

(i) The requirements of subpart T of this part.

(ii) Use of appropriate power package or machine check lists to conduct appropriate tests to ensure that diesel equipment is in approved condition, including emission levels and safe operation.

(iii) Proper maintenance of approved features and the correct use of the appropriate maintenance manuals; including machine adjustments, service, and assembly.

(iv) Diesel equipment fire protection system tests and maintenance.

(v) Fire ignition sources and their control or elimination.

(vi) Safe fueling procedures and maintenance of the fuel system of the machine.

(vii) Intake air system maintenance and tests.

(viii) Engine shutdown device tests and maintenance.

(ix) Other subjects determined by the District Manager to be necessary to address specific health and safety needs.

§ 75.1916 Procedures for approval and administration of diesel mechanic training and qualification programs.

(a) Mine operators who use diesel-powered equipment underground shall submit to the appropriate District Manager not later than [90 days after publication of the final rule] a training and qualification program for diesel mechanics.

(b) As of [180 days after the effective date of the final rule] all persons performing the duties of a diesel mechanic shall be initially qualified in accordance with § 75.1915 of this part.

(c) The training and qualification program submitted to the District Manager shall contain the following:

(1) The company name, mine name, and MSHA identification number of the mine.

(2) A list of instructors and the courses they are qualified to teach.

(3) The location where the instruction will take place.

(4) A description of the teaching methods and the course materials which are to be used in the training.

(5) A copy of the qualification examination and, in the case of annual retraining, the evaluation program to be used.

(d) The operator shall furnish to the representative of the miners a copy of the training and qualification program 14 days prior to its submission to the District Manager. Where a miner's representative is not designated, a copy of the program shall be posted on the mine bulletin board 14 days prior to its submission to the District Manager. Written comments received by the operator from miners or their representatives shall be submitted to the District Manager. Miners or their representatives may submit written comments directly to the District Manager.

(e) Revisions to the program may be initiated by the mine operator or the District Manager to gain approval, retain approval, or to address training needs, changes or modifications, and new technology.

(f) In the event the District Manager disapproves a program or a revision of the program, the District Manager shall notify the mine operator in writing of—

(1) The specific changes or items of deficiency;

(2) The action necessary to effect the changes or bring the disapproved program or modification into compliance; and

(3) The deadline for the completion of the revision.

(g) Failure of a qualified diesel mechanic to complete required retraining within 3 years of initial training and qualification or the most recent annual retraining shall result in a lapse of qualification. A mechanic whose qualification lapses shall complete initial training and qualification to regain qualification.

(h) The District Manager may revoke a diesel mechanic's qualifications for cause, including intentional violation of the requirements of part 75 or the intentional defeat of any safety or health device. Before any revocation becomes effective, the District Manager shall send written reasons for revocation to the diesel mechanic, who shall be given ten calendar days to respond. Unless otherwise determined by the District Manager, revocation shall become effective ten days from notification to the diesel mechanic. A decision by the District Manager, to

revoke a diesel mechanic's qualification, may be appealed by the diesel mechanic to the Administrator for Coal Mine Safety and Health, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203. Such an appeal shall be submitted to the Administrator within 30 days from the effective date of the revocation. Upon revocation of a diesel mechanic's qualification, the District Manager shall immediately notify the appropriate mine operator.

(i) The operator shall maintain a copy of the MSHA approved training and qualification program available at the mine site. This copy shall contain a current instructor list.

(j) The operator shall maintain available for inspection, at the mine site, the names of all persons qualified as underground diesel mechanics, dates of qualification, and the date of the last annual retraining.

§ 75.1917 Operating speed of diesel-powered equipment.

(a) All roadways where diesel-powered equipment is operated shall be maintained as free as practicable from bottom irregularities, debris and wet or muddy conditions that affect control of the equipment.

(b) Diesel-powered equipment operating speeds shall be consistent with conditions of roadways, grades, clearances, visibility and traffic and type of equipment used.

(c) Mobile diesel-powered equipment operators shall have full control of the equipment while it is in motion.

(d) Traffic rules, including speed, signals and warning signs, shall be standardized at each mine and posted.

[FR Doc. 89-23170 Filed 10-3-89; 8:45 am]

BILLING CODE 4510-43-M

30 CFR Part 7

RIN 1219-AA27

Approval Requirements for Diesel-Powered Machines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Mine Safety and Health Administration (MSHA) is in the early stages of developing approval requirements for diesel machines to reduce or eliminate fire, explosion, and safety hazards associated with the use of diesel-powered equipment in

underground coal mines. The approval requirements that are being developed are based on the recommendations of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines (Advisory Committee). Comments and information pertaining to any aspect of the approval requirements are invited. This notice also outlines specific issues on which MSHA is seeking comment and information from the mining community concerning the scope of such approval requirements, their content, and how they would be administered by the Agency.

DATES: All comments and information should be submitted by January 2, 1989.

ADDRESS: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT:

Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, telephone (703) 235-1910.

SUPPLEMENTARY INFORMATION: Based on the recommendations of the MSHA Advisory Committee, MSHA has developed proposed approval regulations under 30 CFR part 7 for diesel engines and power packages to be used in diesel-powered equipment. These proposals are found elsewhere in today's Federal Register. As part of its discussions, the Advisory Committee raised the issue of what types of features should be included in the machine approval requirements for diesel-powered equipment. A machine would consist of an approved diesel engine and an approved diesel power package along with those features added to the machine to reduce or eliminate fire, explosion, or safety hazards. The Advisory Committee recommended that in addition to approval regulations for diesel engines and power packages, an approval program for self-propelled, diesel powered equipment and portable, attended diesel power equipment should be established. The approval program as recommended by the Committee would be directed to those equipment design features most readily addressed by equipment manufacturers. These features would include the incorporation of an approved engine and power package, and include provisions for fuel systems, exhaust gas dilution systems, fire suppression systems, electrical systems, and braking systems. The approval evaluation would stress the

inter-relationships of all of these systems. Specific features such as a neutral start capability, load locking valves and guarding of moving parts would be addressed. In addition, under the Committee recommendation, the machine design would be evaluated to ensure that provisions have been made for the installation of other devices such as methane monitors and cabs and canopies when appropriate.

The Committee also discussed the applicability of certain safety features currently installed on electric equipment such as headlights for illumination and panic bars for emergency shut-downs which might also be applicable to diesel powered equipment. The Committee recommended that MSHA review all existing approval and use standards for equipment safety features potentially applicable to diesel powered equipment in underground coal mines. Machine related safety features currently are addressed in parts 18, 20, 27, 31, 32, 36, and 75.

Specific Issues Identified for Comment

In this advance notice of proposed rulemaking, MSHA is seeking comments and information on a number of issues. Commenters should provide detailed reasons to support their respective positions based upon particular experience and circumstance. MSHA requests comments on all aspects of diesel machine approval requirements and on the following issues in particular:

General Approach and Scope of MSHA Approval Requirements for Diesel Machines

—Should MSHA approval requirements for diesel machines be promulgated under part 7? If part 7 is not appropriate, how should MSHA administer an approval program for diesel machines?

—Should MSHA establish an approval program which ensures that underground use standards have been met? That is, should MSHA include as part of the machine approval evaluation, machine features required by part 75 such as audible warning systems, presence of reflective material, and safety chains for equipment that is towed, and other features such as emergency de-energization devices (panic bars) and fire suppression systems?

Machine Features

—Which of the following machine features are appropriate to include under approval requirements for diesel machines: fuel systems (including piping, tanks, direction of exhaust flow); neutral start capability; emergency de-energization devices (panic bars); braking systems (including service brakes and automatic emergency parking brakes); operators compartment (including controls and gauges); fire suppression systems; electrical systems, (including all components); exhaust dilution systems; fuel dispensing systems on fuel transportation units; hydraulic and pneumatic systems; load

locking valves, and guarding of moving parts?

—Should MSHA provide for certain redundant requirement in both the approval evaluation and part 75 to allow an operator to make changes to a machine pursuant to Part 75 without a need for the operator to apply for a field modification?

Economic Impact

—Some machines currently manufactured and in use underground already have some of the features referred to previously in this ANPRM. What percent of machines, by machine type (e.g., self-propelled), has each of the recommended features?

—Many of the above mentioned features would need to be added to both newly built machines and machines currently in use underground. What specific features are they? How much would these features cost if they were factory installed? How much would these features cost if they were retrofitted to existing equipment?

—What quantitative safety and health related data are available to document the potential benefits of a machine approval? Specifically, what exposure data, incidence rate information and any published studies are available?

Dated: September 26, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 89-23169 Filed 10-2-89; 8:45 am]

BILLING CODE 4510-43-M

Register

Wednesday
October 4, 1989

Part III

Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled
Hazardous Waste Sites; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3655-4]

National Priorities List for Uncontrolled Hazardous Waste Sites—Final Rule Converting Sites Subject to the Subtitle C Corrective Action Authorities of the Resource Conservation and Recovery Act

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). CERCLA has since been amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") and is implemented by Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list and is being revised today by the addition of 23 sites. Based on a review of public comments, EPA has decided that 13 of these sites, which are subject to the corrective action authorities of Subtitle C of the Resources Conservation and Recovery Act ("RCRA"), meet the listing requirements of the NPL. This rule also adds 5 RCRA sites on which no comments were received, and adds 5 non-comment sites which filed RCRA permit applications as a precaution and are not subject to RCRA corrective action authorities. Finally, today's action removes 27 RCRA sites from the proposed NPL. EPA has reviewed public comments on the removal of these sites and has decided not to place them on the NPL because they are subject to the subtitle C corrective action authorities of RCRA, and do not, at this time, appear to come within the categories of RCRA facilities that EPA considers appropriate for the NPL. Information supporting these actions is contained in the Superfund Public Docket.

Elsewhere in today's Federal Register is another final rule that adds 70 sites,

including 11 Federal Facility sites, to the NPL and drops 4 sites from the proposed NPL. These two rules result in a final NPL of 981 sites, 52 of them in the Federal section; 213 sites are proposed to the NPL, 63 of them in the Federal section. Final and proposed sites now total 1,194.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be November 3, 1989. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the Federal Register.

ADDRESSES: Addresses for the Headquarters and Regional dockets follow. For further details on what these dockets contain, see section I of the "SUPPLEMENTARY INFORMATION" portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, 401 M Street SW., Washington, DC 20460, 202/382-3046

Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, John F. Kennedy Federal Building, Boston, MA 02203, 617/565-3300

U.S. EPA, Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154

Diane McCreary, Region 3, U.S. EPA Library, 5th Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-0580

Gayle Alston, Region 4, U.S. EPA Library, Room G-6, 345 Courtland Street NE., Atlanta, GA 30365, 404/347-4216

Cathy Freeman, Region 5, U.S. EPA, 5HS-12, 230 South Dearborn Street, Chicago, IL 60604, 312/886-6214

Deborah Vaughn-Wright, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202-2733, 214/655-6740

Brenda Ward, Region 7, U.S. EPA Library, 728 Minnesota Avenue, Kansas City, KS 66101, 913/236-2828

Dolores Eddy, Region 8, U.S. EPA Library, 999 18th Street, Suite 500, Denver, CO 80202-2405, 303/293-1444

Linda Sonnen, Region 9, U.S. EPA, Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8082

David Bennett, Region 10, U.S. EPA, 9th Floor, 1200 6th Avenue, Mail Stop HW-093, Seattle, WA 98101, 206/442-2103

FOR FURTHER INFORMATION CONTACT: Henry Stevens, Hazardous Site Evaluation Division, Office of

Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9657 ("CERCLA" or the "Act"), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, Stat. 1613 *et seq.* To implement CERCLA, the U.S. Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") 40 CFR Part 300, on July 16, 1982 (47 FR 31180) pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CLA, as amended by SARA, requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)).

Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA. EPA intends to issue the revised HRS as soon as possible. However, until EPA has reviewed public comments and the proposed revisions have been put into effect, EPA will continue to propose and promulgate sites using the current HRS, in accordance with CERCLA section 105(c)(1) and Congressional intent, as explained in 54 FR 13299 (March 31, 1989).

Based in large part on the HRS criterion, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepared a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site can undergo CLA-financed remedial action only after it is placed on the NPL as provided in the NCP at 40 CFR 300.66(c)(2), and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on March 31, 1989 (54 FR 13296). The Agency has also published a number of proposed rulemakings to add sites to the NPL most recently a special update of two sites on August 16, 1989 (54 FR 33846).

EPA may delete sites when no further response is appropriate, as provided in the NCP at 40 CFR 300.66(c)(7). To date the Agency has deleted 28 sites from the NPL, most recently on September 22, 1989 (54 FR 38994) when the Cecil Lindsey site, Newport, Arkansas, was deleted.

Of the sites in this rule, 30 were originally proposed in the first four updates to the NPL,¹ prior to publication

in 1986 of an expanded policy for listing on the NPL certain categories of sites regulated under the Resource Conservation and Recovery Act ("RCRA") (announced on June 10, 1986 (51 FR 21054) and further amended on June 24, 1988 (53 FR 23978)) (the "NPL/RCRA policy"). The 39 sites were identified as possibly subject to the Subtitle C corrective action authorities of RCRA, and therefore possibly subject to the NPL/RCRA policy. Because the public had not been afforded notice and opportunity to comment on the application of this policy to these sites, the Agency repropose the sites (13 to be listed, 26 to be dropped) on June 24, 1988 under the amended policy and at the same time solicited comments on the proposed actions (53 FR 23978). Nine RCRA sites proposed in NPL Update #7 (53 FR 23988, June 24, 1988) and one site proposed in Update #8 (54 FR 19526, May 5, 1989) are also being added to the NPL in this final rule; these sites were proposed under the NPL/RCRA policy, but received no comments. In addition, one RCRA site proposed in Update #7 is being dropped in this final rule because of a change in its RCRA status.

EPA has carefully considered all the public comments submitted on the 39 previously proposed RCRA sites, both in response to the original proposal of the sites, as well as in response to the application of the NPL/RCRA policy to the specific sites. The Agency has made some modifications in this final rule in response to those comments. In addition, the Agency is dropping one proposed Update #7 site in response to comments concerning the site's RCRA status.

The Agency has responded to a number of major comments on the policy for listing RCRA sites in this notice. Responses to more site-specific listing policy issues, as well as comments on HRS scores, are presented in the "Support Document for the Revised National Priorities List—Final Rule Covering Sites Subject to the Subtitle C Corrective Action Authorities of the Resource Conservation and Recovery Act, October, 1989" which is a separate document available in the Headquarters and Regional public dockets (see Addresses portion of this notice).

This rule, together with the final rule appearing elsewhere in today's Federal Register, results in a final NPL of 981 sites, 52 of them in the Federal section; 213 sites are in proposed status, 63 of them in the Federal section. Final and proposed sites now total 1,194.

EPA includes on the NPL sites at which there are or have been releases or

threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases," or alternatively, as "facilities" or "sites."

Information Available to the Public

The Headquarters and Regional public dockets for the NPL (see ADDRESSES portion of this notice) contain documents relating to the scoring and evaluation of sites in this final rule. The dockets are available for viewing "by appointment only" after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

The Headquarters docket contains a memorandum-to-the-record describing the RCRA status of the sites, HRS score sheets for each final site, a Documentation Record for each Final site describing the information used to compute the scores, a list of documents referenced in the Documentation Record, comments received, and the Agency's response to those comments (the "Support Document").

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data upon which EPA principally relied upon in calculating or evaluating the HRS scores for sites in the Region. These reference documents are available only in the Regional dockets. They may be viewed "by appointment only" in the appropriate Regional docket or Superfund Branch office. Requests for copies may be directed to the appropriate Regional docket or Superfund Branch.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment

¹ Update #1 (48 FR 40674, September 8, 1983), Update #2 (49 FR 40320, October 15, 1984), Update #3 (50 FR 14115, April 10, 1985) and Update #4 (50 FR 37950, September 18, 1985).

of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site, and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites EPA believes warrant further investigation.

Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2), and are included on the NPL even if there are RCRA hazardous waste management units within the facility boundaries, consistent with the Federal facilities listing policy (54 FR 10520, March 13, 1989). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at Federally-owned facilities. Federal facility sites are also subject to the requirements of CERCLA section 120, added by SARA.

Implementation

A site can undergo remedial action financed by the Trust Fund established under CERCLA only after it is placed on the final NPL as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). However, EPA may take enforcement actions under CERCLA against responsible parties regardless of whether the site is on the NPL. The fact that the Agency may defer the listing of a site subject to RCRA Subtitle C does not preclude the use of CERCLA section 104 to respond to a release or CERCLA section 106 to compel action by multiple parties at such a site. EPA also has the authority to take removal actions at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.65-67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA (e.g., RCRA). Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other statutory authorities,

to proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or to do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for Superfund-financed response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL—that is, its HRS score. The information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed investigations undertaken during the remedial investigation/feasibility study (RI/FS) to address these concerns.

The RI/FS determines the type and extent of contamination. It also takes into account the amount of contaminants in the environment, the risk to affected populations and the environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in Superfund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

Revisions to the NPL such as today's rulemaking may move some previously listed sites to a lower position on the NPL. However, if EPA has initiated action such as an RI/FS at a site, it does not intend to cease such actions to determine if a subsequently listed site should have a higher priority for funding. Rather, the Agency will continue funding site studies and remedial actions once they have been initiated, even if higher scoring sites are later added to the NPL.

RI/FS at Proposed Sites. An RI/FS can be performed at proposed sites (or

even non-NPL sites) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.68(a)(1). Section 101(23) of CERCLA defines "remove" or "removal" to include "such actions as may be necessary to monitor, assess and evaluate the release or threat of release * * *". The definition of "removal" also includes "action taken under Section 104(b) of this Act * * *," which authorizes the Agency to perform studies, investigations, and other information-gathering activities.

Although an RI/FS is generally conducted at a site after the site has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to human health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries. The Agency has received a number of inquiries concerning whether EPA could (or would) revise NPL site boundaries. The issue frequently arises where a landowner seeks to sell an allegedly uncontaminated portion of an NPL site. The Agency's position is that it is neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for the Agency to describe precise boundaries of releases.

CERCLA section (a)(8)(B) directs EPA to list national priorities among the known "releases or threatened releases" of hazardous substances. Thus, the purpose of the NPL is merely to identify releases of hazardous substances that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release "come to be located" (CERCLA Section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases.² Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue; that is, the NPL release would include all releases evaluated as part of that HRS analysis

² Although CERCLA section 101(9) sets out the definition of "facility" and not "release," those terms are often used interchangeably. (See CERCLA section 105(a)(8)(B), which defines the NPL as a list of "releases" as well as the highest priority "facilities.") (For ease of reference, EPA also uses the term "release" and "facility.")

(including noncontiguous releases evaluated under the NPL aggregation policy, see 48 FR 40663 (September 8, 1983)).

Because the Agency does not formally define the geographic extent of releases (or sites) at the time of listing, there is no administrative process to "delist" allegedly uncontaminated areas of an NPL site (or to expand sites to follow the contamination where it has come to be located).³ Such a process would be time-consuming, subject to constant re-verification, and wasteful of resources. Further, the NPL is only of limited significance, as it does not assign liability to any party. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96-848, 96th Cong., 2d Sess. 60 (1980), quoted at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

EPA regulations do provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). However, this inquiry focuses on an evaluation of the threat posed; it is not a requirement to define the boundaries of the release, and in any event is independent of the NPL listing. Moreover, it is generally impossible to discover the full extent of where the contamination "has come to be located" prior to completion of all necessary studies and remedial work at a site; indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

At the same time, however, the Agency notes that the RI/FS or Record or Decision (ROD) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, based on information known at that time. For example, EPA may evaluate (and list) a release over a 400-acre area, but the ROD may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release

is included on the NPL. The landowner (and the public) should also note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process . . . [T]he NPL serves as a guide to EPA and does not determine liability or the need for response. 49 FR 37081 (September 21, 1984).⁴

III. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating risks presented in three potential "pathways" of human or environmental exposure: ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors "that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure": (1) factors that indicate the presence or likelihood of a release to the environment; (2) factors that indicate the nature and quantity of the substances presenting the potential threat; and (3) factors that indicate the human or environmental "targets" potentially at risk from the site. Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses

mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air" (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(98)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624, September 16, 1985), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory which recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

All of the sites in today's final rule have been placed on the NPL based on HRS scores.

States have the primary responsibility for identifying non-Federal sites, computing HRS scores, and submitting candidate sites to the EPA Regional offices. EPA Regional offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional offices may also consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing

⁴ See also *City of Stoughton, Wisc. v. U.S. EPA*, 858 F. 2d 747, 751 (D.C.Cir. 1988):

Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet . . . "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." *Eagle-Picher [Industries v. EPA] II*, 759 F. 2d [921.] at 932 [(D.C.Cir. 1985)].

³ The Agency has already discussed its authority to follow contamination as far as it goes, and then to consider the release or facility for response purposes to be the entire area where the hazardous substances have come to be located. 54 FR 13298 (March 31, 1989).

(and EPA's listing policies) and solicits public comments on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify on the final NPL.

IV. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that the NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983). Where other authorities exist, placing the site on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to consider certain types of sites for the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policy of relevance to this final rule applies to sites subject to the corrective action authorities of RCRA Subtitle C.

V. Development of the NPL/RCRA Policy

Since the first NPL final rule (48 FR 40658, September 8, 1983) the Agency's policy has been to defer listing sites that could be addressed by the RCRA Subtitle C corrective action authorities, even though EPA has the statutory authority to list all RCRA sites that meet the NPL eligibility criterion (i.e., a score of 28.50 or greater under the HRS). Until 1984, RCRA corrective action authorities were limited to facilities with releases to ground water from surface impoundments, waste piles, land treatment areas, and landfills that received RCRA hazardous waste after July 26, 1982. Sites which met these criteria were listed only if they were abandoned or lacked sufficient

resources, Subtitle C corrective action authorities could not be enforced, or a significant portion of the release came from nonregulated units.

On November 8, 1984, the Hazardous and Solid Waste Amendments (HSWA) were enacted. HSWA greatly expanded RCRA Subtitle C corrective action authorities as follows:

- Section 3004(u) requires permits issued after the enactment of HSWA to include corrective action for all releases of hazardous waste or constituents from solid waste management units at a treatment, storage, or disposal facility seeking a permit.
- Section 3004(v) requires corrective action to be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner/operator of the facility demonstrates that despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action.
- Section 3008(h) authorizes the Administrator of EPA to issue an order requiring corrective action or such other response measures as deemed necessary to protect human health or the environment whenever it is determined that there is or has been a release of hazardous waste into the environment from a facility with interim status.

As a result of the broadened Subtitle C corrective action authorities of HSWA, the Agency sought comment on a policy for deferring the listing of non-Federal sites subject to the Subtitle C corrective action authorities (50 FR 14117, April 10, 1985). Under the draft policy, the listing of such sites would be deferred unless and until the Agency determined that RCRA corrective action was not likely to succeed or occur promptly due to factors such as:

- The inability or unwillingness of the owner/operator to pay for addressing the contamination at the site.
- Inadequate financial responsibility guarantees to pay for such costs.
- EPA or State priorities for addressing RCRA sites.

The intent of the policy was to maximize the number of site responses achieved through the RCRA corrective action authorities, thus preserving the CERCLA Fund for sites for which no other authority is available. Federal facility sites were not considered in the development of the policy at that time because the NCP prohibited placing Federal facility sites on the NPL.

On June 10, 1986 (51 FR 21057), EPA announced components of a policy for the listing, or the deferral from listing, of several categories of non-Federal sites subject to the RCRA Subtitle C corrective action authorities. Under the policy, RCRA sites not subject to Subtitle C corrective action authorities

would continue to be placed on the NPL. Examples of such sites include:

- Facilities that ceased treating, storing, or disposing of hazardous waste prior to November 19, 1980 (the effective date of Phase I of the RCRA regulations), and to which the RCRA corrective action or other authorities of Subtitle C cannot be applied.
- Sites at which only materials exempted from the statutory or regulatory definition of solid waste or hazardous waste were managed.
- RCRA hazardous waste handlers to which RCRA Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters not required to have interim status or a final RCRA permit.

Further, the policy stated that certain RCRA sites at which Subtitle C corrective action authorities are available may also be listed if they meet the criterion for listing (i.e., an HRS score of 28.50 or greater) and they fall within one of the following categories:

- Facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws.
- Facilities that have lost authorization to operate and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action. Authorization to operate may be lost when issuance of a corrective action order under RCRA section 3008(h) terminates the interim status of a facility or when the interim status of the facility is terminated as a result of a permit denial under RCRA section 3005(c). Also, authorization to operate is lost through operation of RCRA section 3005(e)(2) when an owner or operator of a land disposal facility did not certify compliance with applicable ground water monitoring and financial responsibility requirements and submit a Part B permit application by November 8, 1985—also known in HSWA as the Loss of Interim Status Provision (LOIS)).

• Facilities that have not lost authorization to operate, but which have a clear history of unwillingness. These situations are determined on a case-by-case basis.

• On June 24, 1988 (53 FR 23978) EPA amended the June 10, 1986 policy (51 FR 21057) to include four additional categories of RCRA sites as appropriate for the NPL. These categories are:

- Non- or late filers.
- Converters.
- Protective filers.
- Sites holding permits issued before the enactment of HSWA.

In that same June 24, 1988 notice, the Agency proposed to add 13 sites to the NPL on the basis of the amended NPL/RCRA policy, and to drop 30 sites from the proposed NPL because they were subject to the Subtitle C corrective action authorities of RCRA and did not, at the time, appear to fall into one of the categories of RCRA facilities that EPA considers appropriate for listing under the current policy. In addition, in a separate Federal Register notice on the same date (53 FR 23988), the Agency proposed Update #7, which included a number of RCRA sites for listing under the NPL/RCRA policy. Nine of these sites are being added to the NPL in today's final rule. Also, on May 5, 1989 (54 FR 19526), the Agency proposed Update #8, which included 10 sites. One of these sites, a RCRA site, received no comment and is being added to the NPL in today's final rule.

Unwillingness Criteria

As part of the NPL/RCRA policy announced on June 10, 1986 (51 FR 21059), EPA explained its policy of listing RCRA sites where the owner/operator has demonstrated an unwillingness to take corrective action. The policy stated that, as a general matter, EPA prefers using available RCRA enforcement or permitting authorities to require corrective action by the owner/operator at RCRA sites because this helps to conserve CERCLA resources for sites with no financially viable owner/operator. However, when the Agency determines that a RCRA facility owner/operator is unwilling to carry out corrective action directed by EPA or a State pursuant to a RCRA order or permit, there is little assurance that releases will be addressed in a timely manner under a RCRA order or permit. Therefore, such facilities should be listed in order to make CERCLA resources available expeditiously. Under the policy, RCRA facilities will be placed on the NPL when owners/operators are found to be unwilling based on a case-by-case determination.

Several RCRA facilities being finalized in this rule were proposed for the NPL based upon their HRS scores and EPA's case-by-case determination that the owner/operators were unwilling to take corrective action. For each such site, the Agency has prepared a lengthy memorandum to the record, documenting the actions (or failures to act) upon which the unwillingness finding was based. EPA solicited comment on the listing of these sites (and on the findings of unwillingness), and is responding to comment here and in the accompanying support document. EPA believes that the sites are

appropriate for the NPL. On August 9, 1988 (53 FR 30005), EPA added objective criteria to its policy for determining unwillingness. Specifically, a RCRA facility would be placed on the NPL based on unwillingness when the owner/operators are not in compliance with one or more of the following:

- Federal or substantially equivalent State unilateral administrative order requiring corrective action, after the facility owner/operator has exhausted administrative due process rights
- Federal or substantially equivalent State unilateral administrative order requiring corrective action, if the facility owner/operator did not pursue administrative due process rights within the specified time period
- Initial Federal or State preliminary injunction or other judicial order requiring corrective action
- Federal or State RCRA permit condition requiring corrective action after the facility owner/operator has exhausted administrative due process rights
- Final Federal or State consent decree or administrative order on consent requiring corrective action, after the exhaustion of any dispute resolution procedures

However, the Agency explained it would be both unnecessary and inappropriate to go back and reexamine already proposed sites based on the revised criteria. First, the revised criteria had not been announced when the sites in this rule were evaluated for unwillingness and proposed for the NPL. Second, the new criteria do not represent a substantive change, but rather, an attempt at developing more easily applied and understood objective criteria. EPA believes that the determinations of unwillingness made for the sites in this rule fully satisfy the Agency's policy and goals. Third, the Agency recognized that some lead time would be necessary for the Regions and States to apply the new criteria to sites before submitting them for proposal to the NPL; specifically, the Regions and States would be required to issue corrective action orders at RCRA sites before determining unwillingness, rather than evaluating all evidence on a case-by-case basis. Thus, the Agency decided to apply the new criteria only to sites proposed after August 9, 1988, so as not to significantly and unnecessarily delay promulgation and response action at already proposed sites.

Amended NPL/RCRA Policy

On June 24, 1988 (53 FR 23978), the Agency amended its NPL/RCRA policy by adding four categories of RCRA sites appropriate for listing.

(1) *Non- or late Filers:* Facilities that were treating or storing or disposing of Subtitle C hazardous waste after November 19, 1980, and did not file a Part A RCRA permit application by that date and have little or no history of compliance with RCRA.

The Agency decided to place on the NPL "non- or late filers" based on the finding that RCRA treatment, storage or disposal facilities ("TSDFs") that fail to file Part A of the RCRA permit application generally remain outside the range of cognizance of authorities responsible for compliance with RCRA, and generally are without the institutional mechanisms, such as ground water monitoring programs, necessary to assure prompt compliance with the standards and goals of the RCRA program. Therefore, EPA believes that it is not appropriate to defer to RCRA for action at these sites, even though RCRA technically may apply. However, in cases where non- or late filer facilities have in fact come within the RCRA system and demonstrated a history of compliance with RCRA regulations (as may be the case with late filers), the Agency may decide to defer listing and allow RCRA to continue to address problems at the site.

(2) *Converters:* Facilities that at one time were treating or storing RCRA Subtitle C hazardous waste but have since converted to an activity for which interim status is not required (e.g., generators who store hazardous waste for 90 days or less). These facilities, the withdrawal of whose Part A application has been acknowledged by EPA or the State, are referred to as converters.

Converters at one time treated or stored Subtitle C hazardous waste and were required to obtain interim status. EPA believes that under RCRA section 3008(h) it can compel corrective action at such sites. However, RCRA's corrective action program currently focuses on TSDFs subject to permitting requirements, and thus EPA has not routinely reviewed converters under RCRA Subtitle C. EPA has decided that the deferral of this category of sites is not appropriate, as these sites are not currently engaged in treatment, storage, or disposal activities subject to RCRA permitting and they are not a priority for prompt corrective action under RCRA. Instead, the Agency has decided to list such sites to make full CERCLA resources and authorities available, if necessary. In cases where a converter has agreed to corrective action under a RCRA unilateral or consent corrective action order, the Agency will generally defer listing and allow RCRA to continue to address problems at the site.

EPA is currently prioritizing RCRA facilities for corrective action. If the

Agency determines that converter sites will in the future be addressed in an expeditious manner by RCRA authorities, then it will reconsider the listing policy for RCRA converter sites and may defer converters to RCRA for corrective action.

(3) *Protective Filers:* Facilities that have filed RCRA Part A permit applications for treatment, storage, or disposal of Subtitle C hazardous waste as a precautionary measure only. These facilities may be generators, transporters, or recyclers of hazardous wastes, and are not subject to Subtitle C corrective action authorities.

These facilities filed RCRA Part A permit applications as TSDFs as a precautionary measure only, and are generators, transporters, or recyclers of hazardous wastes. Protective filers are not subject to Subtitle C corrective action authorities, and thus, EPA has decided to place them on the NPL in order to make full CERCLA resources and authorities available.

(4) *Pre-HSWA Permittees:* Facilities with RCRA permits for the treatment, storage, or disposal of Subtitle C hazardous waste that were issued prior to the enactment of HSWA, and whose owner/operator will not voluntarily consent to the reissuance of their permit to include corrective action requirements.

For facilities with permits that pre-date HSWA, the owner/operators are not required through the permit to perform corrective action for releases from solid waste management units, and the Agency does not have the authority to modify such pre-HSWA permits to include facility-wide RCRA corrective action under RCRA section 3004(u) until the permit is reissued. Because many pre-HSWA permits are for 10 years, with the last pre-HSWA permit having been issued prior to November 8, 1984, it could be 1994 before the Agency could reissue some permits to include corrective action requirements. Therefore, the Agency has decided to list RCRA facilities with pre-HSWA permits (that have HRS scores of at least 28.50, or are otherwise eligible for listing), so that CERCLA authorities will be available to more expeditiously address any releases at such sites. However, if the permitted facility consents to the reissuance of its pre-HSWA permit to include corrective action requirements, the Agency will consider not adding the facility to the NPL.

Financial Inability to Pay

On August 9, 1988 (53 FR 30002), EPA solicited comment on amendments to the NPL/RCRA policy concerning the inability of an owner/operator to pay for cleanup at a RCRA-regulated site.

The Agency received a number of comments on the amendments under consideration, but has made no final decision concerning these issues. The Agency will respond to comments and announce its decision on this policy in the future.

VI. Response to Public Comments

The Agency received a number of comments on the June 24, 1988 amendments to the NPL/RCRA policy, and on the application of those amendments and the June 10, 1988 NPL/RCRA policy to sites proposed for the NPL. Responses to the significant comments concerning the general application of the amended criteria are summarized below. All site-specific comments are summarized and responded to in the support document accompanying this rule, which is available in the Superfund dockets.

VI.a. Support for the Policy

A number of commenters supported the policy to drop sites from the NPL that can be adequately addressed under the corrective action authorities of RCRA Subtitle C. One commenter supported EPA's ability to initiate short-term emergency actions at RCRA sites. Another commenter supported the planned use of RCRA authority whenever possible, since the use of RCRA authorities "avoids the administrative complexity and unneeded political burden of NPL listing."

In response, the Agency notes that its decision to defer certain sites subject to the RCRA Subtitle C corrective action authorities is based on the ability of those authorities to achieve cleanup at a site and to preserve CERCLA resources for use at other sites.

VI.b. Opposition to the Policy

A number of commenters opposed dropping RCRA sites from the proposed NPL, transferring the sites from CERCLA to RCRA authorities, on the grounds that Superfund authorities are more protective of human health and the environment than are RCRA authorities. One commenter stated that Superfund cleanup standards are more stringent than RCRA's. The commenter noted that CERCLA requires permanent treatment to the maximum extent feasible, whereas RCRA does not. The commenter added that the RCRA program does not include cleanup guidelines similar to those under Superfund. Another commenter stated that CERCLA offers more remedial options than RCRA.

In response, both statutes require that remedies employed protect human

health and the environment. The Agency intends for the two programs to provide similar cleanup solutions for similar environmental problems, even if procedural requirements differ. Indeed, one of the Agency's primary objectives in development of the RCRA corrective action regulations is to achieve substantive consistency with the CERCLA remedial program.

The NPL/RCRA policy is based on efficient allocation of limited CERCLA resources. Although CERCLA provides authority to clean up all sites, including RCRA sites, using CERCLA in all cases would be inefficient because RCRA has authority to conduct certain cleanup actions. Corrective action provisions are now required in RCRA permits, which direct activities at the site, often long after cleanup actions are completed. By deferring to RCRA, more sites are addressed, and the overall goals of both statutes are advanced.

Two commenters opposed transferring sites from CERCLA to RCRA authorities, maintaining that enforcement oversight is greater under CERCLA than RCRA.

In response, EPA believes the RCRA program assures adequate oversight. RCRA orders and permits establish oversight on a site-by-site basis. If a remedial action is extremely complex or the owner/operator is not fully cooperative, EPA may provide extensive oversight. In other cases, extensive oversight is not necessary. In any event, EPA inspection requirements apply to all sites under RCRA corrective action authorities. Under RCRA, States may be authorized to operate a hazardous waste program in lieu of the Federal program. Consequently, in many cases States provide oversight (RCRA section 3006).

One commenter opposed the policy to drop RCRA sites from the NPL because RCRA was not intended as a cleanup bill.

In response, the Agency disagrees. As discussed earlier, HSWA greatly expanded Subtitle C corrective action authorities, and EPA believes a complete cleanup can be achieved under RCRA. As the House Committee on Energy and Commerce noted in its report on HSWA:

Unless all hazardous constituent releases from solid waste management units at permitted facilities are addressed and cleaned up the Committee is deeply concerned that many more sites will be added to the future burdens of the Superfund program with little prospect for control or cleanup. The responsibility to control such releases lies with the facility owner and operator and should not be shifted to the Superfund program, particularly when a final [RCRA] permit has been requested by the

facility. H.Rept. 198, 98th Cong., 1st Sess. 61 (1983).

Sites are not included on the NPL if they are subject to the RCRA Subtitle C corrective action authorities and prompt cleanup appears likely. RCRA authorities may be used by themselves or in conjunction with CERCLA removal and enforcement authorities to initiate corrective action or to continue actions already begun. For sites being dropped from the proposed NPL, if a CERCLA Remedial Investigation/Feasibility Study (RI/FS) or enforcement actions have been initiated, these actions will continue in order to avoid disruption of site cleanup activities. And, of course, deferred RCRA sites may later be added to the NPL if corrective action is not being taken.

One commenter stated that the deletion of sites prior to a complete cleanup sets a bad precedent. The commenter believes that the removal of a site from the NPL because it is being managed under RCRA could give the false impression that the site is no longer a significant threat to public health and the environment.

In response, the deferral of a site to RCRA authorities does not mean that the Agency has determined that cleanup is complete or that a site no longer poses a threat to human health and the environment. Rather, it means that the Agency has determined that the sites can be addressed under another authority, and that, to conserve CERCLA resources and avoid duplication, listing should not proceed. Furthermore, the Agency does not believe that the deferral of a site to RCRA authorities jeopardizes any cleanup that is underway or planned.

The Agency has requested comment on deleting certain final RCRA sites from the NPL in the proposed NCP revisions (53 FR 51421, December 21, 1988); even under the proposed approach, sites would only be deferred where response action was "progressing adequately" under an enforcement order or a RCRA permit and where several other conditions were met.

Several commenters stated that, because RCRA does not give EPA the powers granted by CERCLA, and because not all CERCLA authorities are available at sites not on the NPL, deferring a site from the NPL may deny the Agency the full scope of authorities necessary to compel cleanup by a responsible party. The commenters were particularly concerned that CERCLA cost recovery authorities are not available at RCRA sites. One commenter added that the lack of joint and several liability authorities under

RCRA may obstruct RCRA cleanup at multiparty sites where one party is unwilling.

In response, the only authority unavailable at a deferred RCRA facility is use of the CERCLA Trust Fund for remedial action. The Agency retains ample authorities, under both RCRA and CERCLA, to ensure expeditious cleanup at RCRA facilities. CERCLA section 104 removal actions, including Fund-financed RI/FS's, can be taken at RCRA sites to respond promptly to a release, and cost recovery for such actions would be available. In addition, where an "imminent and substantial endangerment" is posed by a release at a RCRA facility, the Agency may take enforcement action under CERCLA section 106 and thereby compel action by multiple parties.

Although cost recovery and joint and several liability provisions are not available for all RCRA actions, significant authorities are available under RCRA. First, enforcement actions against multiple parties can be brought under RCRA section 7003 if an imminent hazard exists. Second, EPA has corrective action authorities under RCRA section 3008(h) at interim status facilities and under RCRA section 3004 (u) and (v) at permitted facilities. Third, RCRA section 3013 gives EPA authority to conduct investigations and studies at RCRA facilities and require the owner/operator to reimburse EPA for the costs. Although RCRA focuses on owner/operator liability, the Agency can take joint RCRA/CERCLA actions where appropriate (e.g., surface cleanups under RCRA, ground water cleanups under CERCLA section 106), making multiple party solutions feasible.

Under RCRA Subtitle C authorities, liability focuses on the owner/operator for cleanup of hazardous waste releases. However, if the owner/operator is unwilling or unable to carry out such action, EPA may decide to place the site on the NPL to allow Fund-financed cleanup. The Agency may then pursue cost recovery against the owner/operator and other Potentially Responsible Parties (PRPs).

Several commenters opposed transferring sites to RCRA because, they stated, CERCLA provides for more public participation. In addition, one commenter noted that Technical Assistance Grants (TAGs) and public hearing requirements available under Superfund are not available at sites being dropped from the NPL (53 FR 9741, March 24, 1988).

In response, although the process is somewhat different in the two statutes, public participation nevertheless plays an important role in reaching cleanup

decisions under both. The commenter is correct in stating that, under CERCLA section 117(e)(1), a TAG is not available if a site is not on or proposed for the NPL. However, the RCRA program provides for significant public participation opportunities. When issuing a draft permit (or notice of intent to deny), the Agency gives public notice and allows 45 days for written comment. If interest is expressed, public hearings must be held. The Agency will also issue a fact sheet or a statement of basic about the permitting process that is taking place. Procedures for modifying permits at the remedy selection stage, for example, provide similar opportunities for public involvement.

Remedy selection through the permitting process offers public notice and comment opportunities like those in the development of a Superfund Record of Decision. Public participation requirements are also included in a RCRA corrective action order, the amount depending on the circumstances. At a minimum, the public has the opportunity to comment on the corrective measure EPA proposes; EPA considers and responds to all comments received on the corrective measure, and may change the corrective measure in response to public comment. Requirements for additional public involvement, such as public meetings, may be included in the order based on public interest.

VI.c. General Policy Comments/Suggestions

Two commenters stated that to obtain maximum cleanup, EPA should use both RCRA and CERCLA authorities. The commenters believe there will be some instances when one law or the other will be more effective.

The Agency agrees. In general, the NPL/RCRA policy considers which authority is likely to most expeditiously accomplish cleanup, while using the Fund's limited resources as efficiently as possible. If a CERCLA section 106 enforcement action requiring cleanup has been initiated, and a RCRA permit is to be issued to the facility, the Agency may choose to continue these actions under CERCLA. In such cases, the CERCLA cleanup undertaken by the responsible parties would be considered in the RCRA permit proceedings, and the Agency would take steps to avoid inconsistent cleanup actions under RCRA sections 3004(u) at the affected portion of the facility.

One commenter argued that the use of RCRA or CERCLA should not depend upon the solvency of the owners or operators of a site.

The Agency disagrees. RCRA Subtitle C authorities make owner/operators liable for cleanup of most hazardous waste releases. The Agency has simply decided, as a matter of policy, that where the owner/operator is unable to pay for cleanup (e.g., has invoked the protection of the bankruptcy laws), the Agency should list the RCRA-regulated facility and thereby make Superfund moneys available for possible remedial action.

A number of commenters suggested the Agency should defer the listing of RCRA facilities if corrective action is being implemented under other authorities, or is being pursued voluntarily by the owner/operator. Commenters stated that EPA should defer the listing of sites being addressed under CERCLA section 106 enforcement orders, or sites being addressed under State authorities (regardless of whether State programs are RCRA authorized). One commenter argued that listing RCRA sites already being addressed by State agencies discourages owner/operators from cooperating with State authorities since EPA may supplant State enforcement efforts. According to the commenter, for sites with well-advanced remedial action programs under State authorities, a shift to CERCLA would result in a delay and a duplication of effort.

In response, the Agency at present defers to a limited number of authorities, including RCRA Subtitle C. In the proposed revisions to the NCP, the Agency has solicited comment on a policy to expand deferral to include deferral to other Federal and State authorities (53 FR 51415, December 21, 1988); however, that policy is not currently in effect. The Agency has committed not to implement any part of the expanded deferral approach until the public and Congressional concerns have been fully reviewed and analyzed and a decision reached on whether or not to implement such a policy.

The Agency does not agree that its NPL/RCRA policy results in EPA supplanting State enforcement efforts. Before a CERCLA RI/FS is begun at a site (often after listing), a State or voluntary action may proceed unencumbered. Even after an RI/FS is underway, EPA may allow a PRP to go forward with voluntary or State-ordered remedial actions, pursuant to CERCLA section 122(e)(6) (see 54 FR 10520, March 13, 1989). Even if a PRP is not authorized to go forward with non-CERCLA remedial actions, the Agency will consider the work accomplished; thus, actions under State law will not have been wasted. However, if EPA finds that

remedial action under CERCLA is still necessary, then the cleanup standards of CERCLA section 121 must be met.

Several commenters argued that shifts of responsibility from one program to the other (RCRA or CERCLA) may result in counterproductive changes in oversight personnel, duplication of administrative effort, and ultimately, delays in cleanup of sites. Commenters expressed particular concern about programmatic shifts at sites in the latter stages of a remedial effort, at sites undergoing an RI/FS, and at sites with multiple PRPs.

In response, the Agency generally prefers to apply RCRA authorities at RCRA sites, and has developed the NPL/RCRA policy to avoid duplication and delays. In addition, EPA will ensure that actions undertaken by one program will be adopted by the other program if programmatic responsibility shifts. One of the Agency's primary objectives in the development of the RCRA corrective action regulations is to achieve substantive consistency with the remedial program under CERCLA. CERCLA section 104 or section 106 enforcement orders for remedial activities can be referenced in a RCRA permit. In such cases, the Agency would take steps to avoid inconsistent cleanup actions under RCRA section 3004(u) at the affected portion of the facility.

At RCRA sites with many PRPs, EPA may choose to proceed with an enforcement action under CERCLA section 106. Even if the Agency proceeds against the owner/operator alone under RCRA, the owner/operator may seek to recover costs from other PRPs under CERCLA section 107(a)(4)(B); of course, to maintain such an action, the owner/operator would have to show that the costs incurred under RCRA were consistent with the National Contingency Plan.

A number of commenters stated that placing new categories of RCRA sites—such as converter sites—on the NPL will overburden CERCLA resources and increase the possibility that sites on the NPL will not be addressed expeditiously.

In response, after considering the potential impact the NPL/RCRA policy may have, the Agency concluded that the policy will not significantly impact the Trust Fund or jeopardize the timely cleanup of other sites on the NPL.

As noted above, the Agency will consider deferring converter sites if the new prioritizing initiative under RCRA results in their prompt consideration for RCRA corrective action. In addition, the Agency will consider deferring individual converter sites that have

agreed to corrective action under a RCRA permit or order. Similarly, where it appears that certain late filers or pre-HSWA permittee sites will be cleaned up under RCRA, EPA will defer those sites. Finally, even where RCRA sites have been placed on the final NPL, the proposed revisions to the NCP consider deleting such sites for corrective action under RCRA in certain prescribed circumstances (see 53 FR 51421, December 21, 1988).

Two commenters opposed including new categories of RCRA sites in the NPL/RCRA policy. According to one commenter, EPA has departed from its established policy to place on the NPL only those RCRA sites where the owner/operator is unwilling or financially unable to implement the remedy. The commenter argues that EPA has improperly expanded the listing policy to include RCRA sites where RCRA will produce a cleanup. The commenter suggests making the categories no more than rebuttable presumptions for listing.

EPA disagrees with the commenter's suggestion that the Agency acted improperly. The NPL/RCRA policy is, as its name suggests, simply a general statement of policy, issued to advise the public of how the Agency intends to exercise a discretionary power. The Agency is free to decide to change that policy, as it did here, and advise the public of that change (53 FR 23978, June 24, 1988). Indeed, as with any policy, the Agency can exercise its discretion as to whether to apply the policy at all in specific cases (Davis, *Administrative Law Treatise*, section 7:5 (Supp. 1982)).

EPA's June 1988 decision to list—that is, not defer from listing—four new categories of RCRA sites was not inconsistent with the Agency's prior policy on the deferral and listing of RCRA sites; rather it was an expansion of the existing policy. Initially, the Agency decided to defer listing for sites already regulated under RCRA, in order to avoid duplicative actions, maximize the number of cleanups, and help preserve the Trust Fund. The Agency did, however, state that it would list RCRA sites if expeditious cleanup appeared to be unlikely under RCRA, such as when an owner/operator proved to be unwilling or unable to take corrective action EPA deemed necessary (51 FR 21057, June 10, 1986).

Over time, the Agency has developed more experience with the RCRA deferral program and with RCRA cleanups at sites deferred from the NPL. EPA has determined that prompt corrective action under RCRA is not likely when a RCRA owner/operator is unwilling or

unable to pay, a protective filer, a non- or late filer, a converter, or a pre-HSWA permittee. Just as unwillingness is not a requirement for demonstrating inability, neither is it a requirement for demonstrating non-filer or converter status. The rationale for listing the new categories is to capture all potential types of sites that are unlikely to be cleaned up expeditiously under RCRA; the policy does not infer unwillingness on the part of the owner/operator. Converters, non- or late filers, and pre-HSWA permittees, while technically within RCRA jurisdiction, are not likely to be addressed promptly by RCRA. Non-filers generally remain outside the legal cognizance of RCRA, and therefore lack the institutional mechanisms necessary to assure prompt compliance with the standards and goals of RCRA. (If a non- or late filer comes within the RCRA system and demonstrates a history of compliance with RCRA regulations, the Agency may decide to defer listing). Converters, while within the legal purview of RCRA, are not routinely reviewed under Subtitle C because of the current priorities of the RCRA corrective action program. Finally, the Agency does not have the authority to modify pre-HSWA permits to include RCRA corrective action under RCRA section 3004(u) until the permit is reissued; therefore, it could be 1994 before the Agency could reissue some permits to include corrective action.

The Agency agrees with the commenter that RCRA sites may be listed under the new criteria even if there is no express finding of unwillingness. The new categories are not subsets of the unwillingness exception to the NPL/RCRA policy. Rather, these categories are situations where cleanups are not progressing expeditiously under RCRA, making it appropriate to provide the option of spending CERCLA funds for remedial action.

The commenter's suggestion that the four categories be made no more than "rebuttable presumptions" for listing is largely addressed by the policy. The Agency has stated that, in general, it will not defer non- or late filers, although it will consider deferring a site with a history of RCRA compliance such that the Agency has confidence that it will be addressed under RCRA. Similarly, RCRA sites with pre-HSWA permits will be deferred if the permittee agrees to reissuance of the permit, with corrective action provisions included. As for converters, EPA will consider deferring individual converter sites that have agreed to corrective action under a RCRA unilateral or consent corrective

action order, and the Agency will reconsider its general policy for listing converters if it finds that converters are being addressed promptly under RCRA (53 FR 23981, June 24, 1988). The Agency does not have authority to compel RCRA corrective action in the case of protective filers.

One commenter requested adding a listing criterion for sites being addressed as part of a basin-wide scheme under CERCLA.

The response, EPA does not intend to add such a criterion. Under the present policy, the Agency has mechanisms for accomplishing comprehensive remedies at such sites without placing them on the NPL (not listing a site limits only the availability of Fund financing for remedial action). Area-wide contamination involving RCRA and CERCLA units may be addressed under: (1) an area-wide CERCLA section 106 order or (2) a hybrid of RCRA and CERCLA authorities, with RCRA addressing the surface cleanup of RCRA units, CERCLA addressing the surface cleanup of CERCLA units, and CERCLA addressing the cleanup of overlapping ground water contamination (with the RCRA owner/operator as a potentially responsible party). In either case, the Agency may also choose to do one comprehensive RI/FS study of the area under its CERCLA removal authority (54 FR 13298, March 31, 1989).

One commenter stated that the decision on which authority to use should be made after the site is placed on the final NPL. According to the commenter, placement of a site on the NPL does not bind either EPA or owner/operators and PRPs to address the site under RCRA or CERCLA, and allows EPA to use enforcement authorities RCRA does not have, if necessary.

In response, it is true that placing a site on the NPL does not force the Agency to use CERCLA authorities, or CERCLA authorities alone. The Agency is free to use CERCLA and/or any other authorities that apply to the site in question. The converse is also true—EPA can use CERCLA removal and enforcement authorities at NPL and non-NPL sites. The NPL serves primarily as a management tool for the Agency in setting priorities under CERCLA, especially for use of the Trust Fund. The NPL/RCRA policy is one tool in this prioritization process; its goal is to maximize the overall number of site cleanups by using RCRA corrective action authorities where available and likely to result in expeditious cleanup, thus preserving CERCLA resources for other sites. The Agency believes that RCRA owner/operators should finance

cleanups at their facilities. If, however, the owner/operator is unwilling or unable to finance cleanup, or the facility is outside the RCRA regulatory system (a non-filer), the Agency has established criteria for the listing of these sites.

The commenter stated it would be poor policy to transfer sites from CERCLA to RCRA at the end of the Reagan Administration. The commenter believes the new Administration should reassess the policy.

In response, this rule has been reviewed by and signed by the current Administration. The NPL/RCRA policy is being continued, subject to periodic review.

VI.d. Non- or Late Filers

The commenter argued that the decision to list a non- or late filer should be based on the facility's history of compliance with RCRA. The commenter added that the Agency should assure that sites that filed a part A permit application late, or not at all, but that have subsequently made an effort to comply with RCRA regulations, will be deferred from the NPL. According to the commenter, potential buyers of non- or late filer facilities will be inhibited from buying these facilities (and cleaning them up) because of the possibility of listing.

In response, EPA deliberately stated that it "will consider" deferring certain non- or late filers, because the Agency does not wish to imply that deferral is automatic. The Agency will consider for deferral any non- or late filer facility that has come within the RCRA system and demonstrated a history of compliance with RCRA regulations. The Agency does not believe that its determination of the adequacy of a non- or late filer's effort to comply with RCRA regulations will inhibit a potential sale. A non- or late filer that complies with the appropriate RCRA regulations and actively pursues corrective action under RCRA (through a permit or order) will generally be seen as a good candidate for deferral.

The commenter stated that non- or late filing often results from ignorance of regulatory requirements, and that placing a site on the NPL should therefore be based on willingness, not history of RCRA compliance.

In response, non- or late filers are not subsets of the unwillingness exception to the RCRA deferral policy. Rather, the Agency has identified this and two other categories as situations where cleanups may not progress expeditiously under RCRA, and thus EPA wants the option of spending CERCLA funds for remedial action. The decision to add a non- or

late filer site to the NPL is generally based on the fact that no timely permit application has been made, and thus adequate regulatory mechanisms (e.g., ground water monitoring programs, compliance inspections, and closure requirements) may not be in place to assure prompt compliance with the standards and goals of the RCRA program. Because of RCRA program priorities, the Agency may not always be able to immediately address a non- or late filer that is suddenly willing to be addressed under RCRA authorities. The Agency believes that in most cases it is in the best interest of environmental protection to make CERCLA funds available at such sites.

VI.e. Converters

One commenter supported the proposed policy to list converters but suggested that the policy should include facilities that submitted part A permit applications under RCRA and did not actively pursue part B permits and/or whose operations no longer demand a part B permit. The commenter refers to these sites as "de facto" converters and believes they should be treated the same as generators.

In response, converters are facilities that at one time treated or stored RCRA subtitle C hazardous waste but have since converted to generator-only status (i.e., facilities that now store hazardous waste for 90 days or less, an activity for which interim status is not required). The sites described by the commenter will be considered converters only if there is documentation of conversion and the Agency agrees that the sites are appropriate for the NPL.

The Agency does not believe that converters should receive the same treatment as generators with regard to the NPL. The Agency does not have corrective action authority under RCRA subtitle C to compel cleanup at generator-only facilities, and thus deferral to RCRA for corrective action would be inappropriate. By contrast, the Agency can, under subtitle C, compel corrective action at converter facilities; however, because of current priorities in the RCRA program, the Agency believes converter facilities should be placed on the NPL to ensure prompt corrective action.

Some of the facilities described by the commenter may also be protective filers; that is, they filed a Part A permit application as a precautionary measure only and did not pursue a Part B permit. If a facility did in fact file for interim status protectively, listing may be appropriate under this policy.

Several commenters suggested that the policy for listing converters unfairly

penalizes owner/operators that take environmentally responsible actions to close waste handling activities and convert to generators status. The commenter stated that the policy would inhibit owner/operators from reducing their hazardous waste activities, because if they converted to generator status they might be placed on the NPL as a converter.

In response, the Agency does not list a RCRA site solely on the basis of its decision to discontinue treatment or storage activities. A site must receive an HRS score equal to or higher than the cutoff score to be placed on the NPL. The Agency believes it unlikely that, to avoid listing, a facility owner/operator would choose to retain treatment or storage status, which means the site remains subject to all RCRA requirements, including cleanup under RCRA corrective action authorities. In addition, it is unlikely and owner/operator will incur the cost of RCRA permitting and/or oversight merely to avoid listing. Finally, if a converter agrees to corrective action under RCRA, the Agency will generally defer the listing of such a site.

One commenter opposed the listing of converters, arguing that the Agency should use RCRA section 3008(h) corrective action authorities at such facilities. According to the commenter, the RCRA program should prioritize and allocate its resources to address any sites, including converters, that may need corrective action.

The Agency believes that under RCRA section 3008(h) it can compel corrective action at converter facilities. Nonetheless, the Agency has decided, as a matter of policy, to list converters since EPA has not routinely reviewed converters under RCRA subtitle C, and the Agency believes it can ensure expeditious remedial action at these sites if they are placed on the NPL. The EPA is currently prioritizing RCRA facilities for corrective action. If the Agency determines that converter sites will be addressed in an expeditious manner by RCRA authorities, then it will reconsider the policy to list converters.

Moreover, where a converter has agreed to corrective action such as under a RCRA section 3008(h) order, the Agency will generally defer listing such sites and allow RCRA to continue to address the contamination problems at the site.

VI.f. Protective Filers

Two commenters agreed with EPA's conclusion that the Agency does not have the authority to compel cleanup of protective filers under RCRA subtitle C

corrective action authorities. One commenter suggested RCRA section 7003 authorities as an alternative to CERCLA authorities when an "imminent and substantial endangerment" exists.

In response, since the beginning of the NPL, EPA's clear policy has been to defer the listing of RCRA sites where the regulatory authorities of RCRA subtitle C apply. For example, on September 8, 1983 (48 FR 40662), the Agency stated: "where a site consists of regulated units of a RCRA facility operating pursuant to a permit or interim status, it will not be included on the NPL" (48 FR 40662). The Agency explained that the Hazardous Waste Management Regulations (40 CFR 260-265) give EPA and the states authority to control sites through a broad program which includes monitoring, compliance inspections, penalties for violations, and requirements for post-closure plans and financial responsibility.

The passage of HSWA, in 1984, expanded RCRA's corrective action authorities under subtitle C even further, and the scope of the RCRA deferral policy was correspondingly expanded. The deferral policy was thus based on a determination that in most cases, hazardous waste treatment, storage and disposal facilities would be managed and permitted (or closed) under an on-going RCRA regulatory system, and that in most appropriate cases, contamination would be cleaned up.

EPA did not, in its NPL/RCRA policy, propose to defer sites if a RCRA section 70003 enforcement action could potentially be taken. Unlike the provisions of RCRA subtitle C, which set up an on-going program for the management of hazardous wastes, section 7003 provides authority for the Agency to take enforcement actions in extraordinary cases where "the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent or substantial endangerment to health or the environment." Although limited to cases involving imminent and substantial endangerment, section 7003 is sweeping at the same time. It applies to past RCRA owners as well as present owner/operators, and it applies to all facilities that handle "solid" (nonhazardous) wastes; solid waste facilities are not required to have RCRA subtitle C permits or interim status. EPA has determined that it would not be appropriate to defer listing RCRA sites (and solid waste sites) to section 7003 simply because that section might provide a means of addressing contamination problems. Rather, EPA

has limited deferral to cases where the subtitle C regulatory program is in place, and prompt corrective action appears likely.

VI.g. Pre-HSWA Permittees

Several commenters opposed listing pre-HSWA permittees because they believe Congress intended that pre-HSWA permitted facilities be addressed under RCRA. The commenters stated that EPA has authority under RCRA section 3005(c)(3) to modify a permit at any time to comply with currently applicable RCRA regulations, including corrective action, and under RCRA section 7003 to require cleanup if an "imminent and substantial endangerment" exists. The commenters believe that listing pre-HSWA permittees would circumvent Congressional intent and burden Superfund. One commenter added that the Agency's requirement that a facility with a final RCRA permit "consent" to a modification of its pre-HSWA permit, including corrective action requirements to avoid listing, constitutes an abuse of Agency authority.

In response, RCRA section 3005(c)(3), which states "Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term," merely preserved preexisting authority to modify permits. However, facility-wide corrective action at RCRA facilities applies only when the permit is issued or reissued. Section 3004(u), the facility-wide corrective action authority, requires such corrective action only for permits "issued" after 1984. Under EPA regulations, a "modification" is significantly different from a permit issuance. Modification of a pre-HSWA permit does not trigger 3004(u) corrective action; the permit must be reissued to include facility-wide corrective action.

Because the Agency lacks authority to address pre-HSWA permittees through RCRA section 3004(u) until permit reissuance, there is no immediate mechanism to require corrective action at pre-HSWA permitted facilities. As EPA explained on June 24, 1988 (53 FR 23978), many pre-HSWA permits were issued for 10 years, and the last pre-HSWA permit was issued in 1984. Thus, it could be 1994 before the Agency can reissue all pre-HSWA permits to include facility-wide corrective action. The Agency is proposing that facilities with pre-HSWA permits be considered for the NPL in order to assure expeditious corrective action at the site.

The Agency disagrees that allowing a pre-HSWA permittee to consent to modification of its permit rather than to

be placed on the NPL is an "abuse of authority." Allowing a pre-HSWA permittee to consent to reissuance of its pre-HSWA permit to include 3004(u) corrective action rather than be placed on the NPL gives the opportunity to clean up under RCRA if the permittee chooses to do so.

VI.h. Application Of Unwillingness Policy

Several commenters asserted that sites proposed for the NPL based on the case-by-case unwillingness criteria of June 10, 1986 (51 FR 21057) should be re-examined under the revised criteria of August 9, 1988 (53 FR 30005).

In response, the Agency specifically stated that the new criteria should be applied prospectively only, and that it would be unnecessary and inappropriate to devote CERCLA resources to an additional review of unwillingness determinations that were properly made under a case-by-case determination (53 FR 30007).

Prior to the August 1988 policy, EPA listed RCRA sites as "unwilling" after a detailed case-by-case review that required considerable time and resources, and generated long support documents. To simplify the process and make it easier to understand, the Agency laid out objective criteria that would be simple to apply (53 FR 30005, August 9, 1988). In doing so, the Agency was not suggesting that prior determinations were somehow insufficient or incorrect; indeed, EPA believes that its case-by-case determinations were appropriate, and fully in line with the goals of the NPL/RCRA policy. Rather, the new criteria reflect an effort to replace the flexible and case-specific requirements of the past with more standardized documentation requirements in the future; the substantive goals of the policy are not changed. Thus, the issuance of the new standardized criteria for the future did not warrant a reassessment of sites already proposed for the NPL based on thorough, past unwillingness determinations.

The Agency chose to apply the new criteria prospectively to give EPA Regions and States enough lead time to understand the new requirements and prepare appropriate listing packages. For instance, the Regions or States may issue a specific RCRA corrective action order to demonstrate unwillingness even if other indicators of unwillingness are available. Applying the new criteria to already-proposed sites might require issuing additional orders fruitlessly if the owner/operator has already shown unwillingness, and listing would be significantly delayed, contrary to

Congressional intent that EPA expeditiously list sites.

In any event, listing does not mean that remedial action will be taken; it only makes the site eligible for Fund-financed remedial action, should that prove necessary. Thus, the significance of the listing decision is limited. As the U.S. Court of Appeals for the D.C. Circuit noted in *City of Stoughton, Wisconsin v. EPA*, "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." (858 F.2d 747, 751 (D.C. Cir. 1988)). It is both reasonable and appropriate for EPA to limit the resources it expends on the determination of which of its statutes—RCRA or CERCLA—should have primary responsibility for securing needed corrective action.

One commenter suggested that the unwillingness policy rewards recalcitrance under RCRA, since if the owner/operator ignores RCRA obligations, and the site is placed on the NPL, EPA will find PRPs and engage in cost recovery efforts. The unwilling owner/operator has fewer transactional and administrative costs and a smaller share of cleanup costs.

In response, the Agency believes it is not advantageous for owner/operators to ignore their RCRA obligations. If an owner/operator does not comply with RCRA regulations, the Agency can pursue both RCRA and CERCLA enforcement authorities. RCRA corrective action orders can contain penalties of up to \$25,000 per day of noncompliance and can result in a suspension or revocation of the facility's permit or interim status. EPA can also use CERCLA section 106 authorities and subsequently recover any cost incurred. EPA does not believe the policy rewards recalcitrance; the policy is designed to provide a framework for most effectively addressing releases that may affect public health and the environment.

One commenter believes that sites where owner/operators show unwillingness to cooperate with State-issued cleanup orders, actions, or permit conditions should be listed.

EPA agrees. The Agency's stated policy is list RCRA sites where the owner/operator has been found to be unwilling to perform corrective action. The August 9, 1988 (53 FR 30005) policy statement includes certain objective criteria (for prospective application) for determining unwillingness by RCRA owner/operators. The policy generally defines unwillingness as noncompliance with corrective actions directed by a

State or Federal authority pursuant to a RCRA order or permit, an administrative or judicial order, or a consent decree.

VII. Disposition of Sites in Today's Final Rule

This final rule adds 23 sites to the final NPL; a list of these sites is at the end of this rule. This rule also drops 27 sites from the proposed NPL (Table 1). The June 24, 1988 notice addressed 39 of these sites, which were originally proposed in the following NPL updates:

- Update #1 (48 FR 40674, September 8, 1983)
- Update #2 (49 FR 40320, October 15, 1984)
- Update #3 (50 FR 14115, April 10, 1985)
- Update #4 (50 FR 37950, September 18, 1985)

The remaining 11 sites were proposed in NPL Update #7 (53 FR 23988, June 24, 1988) and Update #8 (54 FR 19526, May

5, 1989), based on the NPL/RCRA policy. Nine of the proposed Update #7 sites received no comments and are being listed; one of the proposed Update #7 sites is being dropped because it is no longer bankrupt and therefore, no longer meets the criteria for listing under the NPL/RCRA policy. One of the Update #8 sites received no comments and is being listed. EPA has not reached a decision on four other sites that were proposed to be dropped from the NPL on June 24, 1988. These sites will remain proposed for the NPL. They are:

- Fairchild Semiconductor Corp., (Mountain View Plant), Mountain View, CA
- Chemplex Co., Clinton/Camanche, IA
- Findett Corp., St. Charles, MO
- Burlington Northern Railroad (Somers Tie-Treating Plant), Somers, MT

All comments submitted after the close of the comment periods associated with the rules proposing these sites were considered for this final rule. EPA has revised the HRS scores for 5 sites based on its review of comments and additional information developed by EPA and the States (Table 2). None of the score changes has resulted in scores below the cut-off of 28.5. Some of the changes have placed the sites in different groups of 50 sites. The Agency's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List—Final Rule Covering Sites Subject to the Subtitle C Corrective Action Authorities of the Resource Conservation and Recovery Act, October, 1989."

TABLE 1.—RCRA SITES DROPPED FROM PROPOSED NPL

State/Site name	Location	Date proposed
CA: FMC Corp. (Fresno Plant)	Fresno	10/15/84
CA: Hewlett-Packard	Palo Alto	10/15/84
CA: IBM Corp. (San Jose Plant)	San Jose	10/15/84
CA: Kaiser Steel Corp. (Fontana Plant)	Fontana	06/24/88
CA: Marley Cooling Tower Co.	Stockton	10/15/84
CA: Rhone-Poulenc, Inc./Zoecon Corp.	East Palo Alto	10/15/84
CA: Signetics, Inc.	Sunnyvale	10/15/84
CA: Southern Pacific Transportation Co.	Roseville	10/15/84
CA: Van Waters & Rogers Inc.	San Jose	10/15/84
CO: Martin Marietta (Denver Aerospace)	Waterton	09/18/85
FL: Pratt & Whitney Aircraft/United Technologies Corp.	West Palm Beach	09/18/85
GA: Olin Corp. (Areas 1, 2 & 4)	Augusta	09/08/83
IA: A.Y. McDonald Industries, Inc.	Dubuque	09/18/85
IA: Frit Industries (Humboldt Plant)	Humboldt	04/10/85
IA: John Deere (Dubuque Works)	Dubuque	09/18/85
IA: U.S. Nameplate Co.	Mount Vernon	10/15/84
IL: Sheffield (U.S. Ecology, Inc.)	Sheffield	10/15/84
IN: Firestone Industrial Products Co.	Noblesville	09/18/85
KS: National Industrial Environmental Services	Furley	10/15/84
MI: Hooker (Montague Plant)	Montague	09/18/85
MI: Lacks Industries, Inc.	Grand Rapids	10/15/84
NE: Monroe Auto Equipment Co.	Cozad	09/18/85
NJ: Matlack, Inc.	Woolwich Township	09/18/85
OH: General Electric Co. (Coshocton Plant)	Coshocton	10/15/84
PA: Rohm & Haas Co. Landfill	Bristol Township	04/10/85
VA: IBM Corp. (Manassas Plant Spill)	Manassas	10/15/84
WV: Mobay Chemical Corp. (New Martinsville Plant)	New Martinsville	10/15/84

TABLE 2.—SITES WITH HRS SCORE CHANGES

State/Site name	City/County	Proposed	Final
CA: Fairchild Semiconductor (South San Jose)	San Jose	37.79	44.46
IN: Prestolite Battery Division	Vincennes	37.54	40.63
ME: Union Chemical Co., Inc.	South Hope	30.78	32.11
MO: Conservation Chemical Co.	Kansas City	29.99	29.85
NC: National Starch & Chemical Corp.	Salisbury	31.94	46.51

VIII. Disposition of all Proposed Sites/ Federal Facility Sites

To date, EPA has proposed nine major updates to the NPL, as well as a special update of two sites. A total of 213 sites remain proposed (Table 3). At this time,

150 sites and 63 Federal facility sites continue to be proposed pending completion of response to comments, resolution of technical issues, and various policy issues.

All sites that remain proposed will be considered for future final rules. Although EPA has in the past considered late comments on proposed sites to the extent practicable, it may not be able to do so in the future.

TABLE 3.—NPL PROPOSALS

Update No.	Date/Federal Register Citation	Number of sites/Federal facility sites	
		Proposed	Remaining proposed
1.....	9/8/83; 48 FR 40674.....	132/1	1/0
2.....	10/15/84; 49 FR 40320.....	208/36	17/3
3.....	4/10/85; 50 FR 14115.....	26/6	0/1
4.....	9/18/85; 50 FR 37950.....	38/3	1/2
5.....	6/10/86; 51 FR 21099.....	43/2	8/0
6.....	1/22/87; 52 FR 2492.....	63/1	13/0
7.....	6/24/88; 53 FR 23988.....	215/14	103/5
8.....	5/5/89; 54 FR 19526.....	10/0	5/0
9.....	7/14/89; 54 FR 29820.....	0/52	0/52
ATSDR.....	8/16/89; 54 FR 33846.....	2/0	2/0
Total.....		735/115	150/63

IX. Contents of the NPL

The NPL, with the Federal facility sites in a separate section, appears as Appendix B to the NCP at the end of the other final rule appearing in today's **Federal Register**. Sites on the NPL are arranged according to their HRS scores. The 23 new sites added to the NPL in today's rule have been incorporated into the NPL in order of their HRS scores, except where EPA modified the order to reflect top priorities designated by the States, as discussed in section III of this rule.

The NPL is presented in groups of 50 sites to emphasize that minor differences in HRS scores do not necessarily represent significantly different levels of risk. Except for the first group, the score range within the groups, as indicated in the list, is less than 4 points. EPA considers the sites within a group to have approximately the same priority for response actions. For convenience, the sites are numbered.

One site—the Lansdowne Radiation site in Lansdowne, PA—was placed on the NPL because it met the requirements of the NCP at section 300.66(b)(4), as explained in section III of this rule; it has an HRS score of less than 28.50, and appears at the end of the list.

Each entry on the new NPL and Federal section contains the name of the facility and the State and city or county in which it is located. In the past, each entry was accompanied by one or more notations reflecting the status of response and cleanup activities at the site at the time this list was prepared. EPA is developing a report summarizing response activities at NPL sites. In the interim, information on activities at the new proposed sites is available upon request to the appropriate Regional Office.

X. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly

attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NCP. EPA believes that the kinds of economic effects associated with this revision are generally similar to those effects identified in the following: the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP, the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985), and the economic analysis prepared for the NCP proposed revisions of December 21, 1988 (53 FR 51471). The Agency believes the anticipated economic effects related to adding 23 sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as requested by Executive Order 12291.

Costs

EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any section by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in this rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/

feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, there is

wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site *
RI/FS.....	1,100,000
Remedial design.....	750,000
Remedial action.....	^b 13,500,000
Net present value of O&M.....	3,770,000

* 1988 U.S. dollars.

^b Includes State cost-share.

^c Assumes cost of O&M over 30 years, \$400,000 for the first year and 10% discount rate.

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA.

Costs to States associated with today's final rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs to privately-owned sites and sites which are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period for participation. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the sites added to the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately \$59 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25 percent of sites. Using this estimate, State O&M costs would be approximately \$66 million.

Placing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may

impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this revision on output, prices, and employment is expected to be negligible at the national level.

Benefits

The real benefits associated with today's amendment placing additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets may also give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

XI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impact of this action on small entities or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The placing of sites on the

NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. Placing a site on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impact from the listing of these 23 sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 26, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste & Emergency Response.

PART 300—[AMENDED]

40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

2. Appendix B of part 300 is amended by the addition of the sites in the following list. Appendix B is revised elsewhere in today's Federal Register.

NATIONAL PRIORITIES LIST, NEW FINAL SITES (BY RANK), OCTOBER 1989

NPL		State	Site Name	City/County
Group ¹	Rank			
2	60	NJ	Brook Industrial Park	
3	138	CA	Brown & Bryant, Inc. (Arvin Plant)	Bound Brook
5	224	NE	Lindsay Manufacturing Co.	Arvin
6	257	NC	National Starch & Chemical Corp.	Lindsay
6	278	VA	Culpeper Wood Preservers, Inc.	Salisbury
7	310	CA	Fairchild Semiconductors (S. San Jose)	Culpeper
7	315	NY	Tri-Cities Barrel Co., Inc.	South San Jose
8	385	IA	Electro-Coatings, Inc.	Port Crane
9	420	AZ	Motorola, Inc. (52nd Street Plant)	Cedar Rapids
9	424	VA	Buckingham County Landfill	Phoenix
9	429	IN	Prestolite Battery Division	Buckingham
13	639	CA	J.H. Baxter & Co.	Vincennes
14	661	IL	Ilada Energy Co.	Weed
14	664	TX	Dixie Oil Processors, Inc.	East Cape Girardeau
14	678	MI	Kysor Industrial Corp.	Friendswood
14	679	CA	Lorentz Barrel & Drum Co.	Cadillac
16	760	ME	Union Chemical Co., Inc.	San Jose
16	765	PA	Recticon/Allied Steel Corp.	South Hope
16	772	FL	City Industries, Inc.	East Coventry Twp.
16	796	NC	Benfield Industries, Inc.	Orlando
17	850	WA	American Crossarm & Conduit Co.	Hazelwood
18	861	GA	Marzone Inc./Chevron Chemical Co.	Chehalis
18	876	MO	Conservation Chemical Co.	Tifton
				Kansas City

* State top priority site.

¹ Sites are placed in groups corresponding to groups of 50 on the final NPL.
Number of New Final Sites: 23.

[FR Doc. 89-23338 filed 10-3-89; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 300**

[FRL 3655-6]

National Priorities List for Uncontrolled Hazardous Waste Sites—Final Rule 10/04/89**AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"). CERCLA has since been amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") and is implemented by Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP

on September 8, 1983 (48 FR 40658), constitutes this list and is being revised today by the addition of 70 sites, including 11 Federal facility sites. Based on a review of public comments on these sites, EPA has decided that they meet the eligibility requirements of the NPL and are consistent with the Agency's listing policies. In addition, today's action removes four sites from the proposed NPL. Information supporting these actions is contained in the Superfund Public Dockets.

Elsewhere in this Federal Register is another final rule that adds 23 sites to the NPL that meet EPA's eligibility requirements and listing policies and removes 27 sites from the proposed NPL that do not, at this time, appear to come within the categories of Resource Conservation and Recovery Act ("RCRA") facilities that EPA considers appropriate for the NPL.

These two rules result in a final NPL of 981 sites, 52 of them in the Federal section; 213 sites are proposed to the NPL, 63 of them in the Federal section. Final and proposed sites now total 1,194.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be November 3, 1989. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha* 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the

effective date of this regulation into question, the Agency will publish a notice of clarification in the Federal Register.

ADDRESSES: Addresses for the Headquarters and Regional dockets follow. For further details on what these dockets contain, see Section I of the "Supplementary Information" portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, OS-245, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/382-3046
Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203, 617/565-3300
U.S. EPA, Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154
Diane McCreary, Region 3, U.S. EPA Library, 5th Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-0580
Gayle Alston, Region 4, U.S. EPA Library, Room G-6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347-4216
Cathy Freeman, Region 5, U.S. EPA, 5 HS-12, 230 South Dearborn Street, Chicago, IL 60604, 312/886-6214
Deborah Vaughn-Wright, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202-2733, 214/655-6740

Brenda Ward, Region 7, U.S. EPA
Library, 726 Minnesota Avenue,
Kansas City, KS 66101, 913/236-2828

Dolores Eddy, Region 8, U.S. EPA
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Denver, CO 80202-2405, 303/293-1444

Linda Sunnen, Region 9, U.S. EPA
Library, 8th Floor, 215 Fremont Street,
San Francisco, CA 94105, 415/974-8082

David Bennett, Region 10, U.S. EPA, 9th
Floor, 1200 6th Avenue, Mail Stop
HW-093, Seattle, WA 98101, 206/442-2103

FOR FURTHER INFORMATION CONTACT:
Robert Myers, Hazardous Site
Evaluation Division, Office of
Emergency and Remedial Response
(OS-230), U.S. Environmental Protection
Agency, 401 M Street, SW, Washington,
DC, 20460, or the Superfund Hotline,
Phone (800) 424-9346 (382-3000 in the
Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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- II. Purpose and Implementation of the NPL
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- VI. Disposition of All Proposed Sites/Federal Facility Sites
- VII. Contents of the NPL
- VIII. Regulatory Impact Analysis
- IX. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9657 ("CERCLA" or the "Act"), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et seq.* To implement CERCLA the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180) pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA. EPA intends to issue the revised HRS as soon as possible. However, until EPA has reviewed public comment and the proposed revisions have been put into effect, EPA will continue to propose and promulgate sites using the current HRS, in accordance with CERCLA section 105(c)(1) and Congressional intent, as explained in 54 FR 13299 (March 31, 1989).

Based in large part on the HRS criterion, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepared a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has since been expanded, most recently on March 31, 1989 (54 FR 13296). The Agency has also published a number of proposed rulemakings to add sites to the NPL, most recently a special update of two sites on August 16, 1989 (54 FR 33846).

EPA may delete sites from the NPL when no further response is appropriate, as provided in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 28 sites from the final NPL, most

recently on September 22, 1989 (54 FR 38994), when Cecil Lindsey, Newport, Arkansas, was deleted.

This rule adds 70 sites, including 11 Federal facility sites, to the NPL. EPA has carefully considered public comments submitted for the sites in today's final rule and has made some modifications in response to those comments. This rule and the additional final rule published elsewhere in today's Federal Register result in a final NPL of 981 sites, 52 of them in the Federal section; 213 sites are in proposed status, 63 of them in the Federal section. In addition, 31 sites are being dropped from the proposed NPL in the two rules. With these changes, final and proposed sites now total 1,194.

EPA includes on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases", "facilities", or "sites".

Information Available to the Public

The Headquarters and Regional public dockets for the NPL (see ADDRESSES portion of this notice) contain documents relating to the evaluation and scoring of sites in this final rule. The dockets are available for viewing "by appointment only" after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m. Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

The Headquarters docket contains HRS score sheets for each final site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by special study waste or other requirements, or Resource Conservation and Recovery Act or other listing policies; a list of documents referenced in the Documentation Record; comments received; and the Agency's response to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List—Final Rule 10/04/89."

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data principally relied upon by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. They may be viewed "by appointment only" in the

appropriate Regional Docket or Superfund Branch office. Requests for copies may be directed to the appropriate Regional docket or Superfund Branch.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)):

The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites EPA believes warrant further investigation.

Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at Federally-owned facilities. Federal facility sites are also subject to the requirements of CERCLA section 120, added by SARA.

Implementation

A site can undergo remedial action financed by the Trust Fund established under CERCLA only after it is placed on the final NPL as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's enforcement actions has been and will continue to be

on NPL sites. Similarly, in the case of removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.65-67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for Superfund-financed response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL—that is, its HRS score. The information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) to address these concerns.

The RI/FS determines the nature and extent of the threat posed by the release or threatened release. It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

Revisions to the NPL such as today's rulemaking may move some previously listed sites to a lower position on the NPL. However, if EPA has initiated action such as an RI/FS at a site, it does not intend to cease such actions to determine if a subsequently listed site should have a higher priority for funding. Rather, the Agency will continue funding site studies and remedial actions once they have been initiated, even if higher-scoring sites are later added to the NPL.

RI/FS at Proposed Sites. An RI/FS can be performed at proposed sites (or even non-NPL sites) pursuant to the Agency removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.68(a)(1). Section 101(23) of CERCLA defines "remove" or "removal" to include "such actions as may be necessary to monitor, assess and evaluate the release or threat of release * * *". The definition of "removal" also includes "action taken under Section 104(b) of this Act * * *" which authorizes the Agency to perform studies, investigations, and other information-gathering activities.

Although an RI/FS is generally conducted at a site after the site has been placed on the NPL, in a number of circumstances the Agency elects to conduct RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to human health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries. The Agency has received a number of inquiries concerning whether EPA could (or would) revise NPL site boundaries. The issue frequently arises where a landowner seeks to sell an allegedly uncontaminated portion of an NPL site. The Agency's position is that it is neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for the Agency to describe precise boundaries of releases.

CERCLA section 105(a)(8)(B) directs EPA to list national priorities among the known "releases or threatened releases" of hazardous substances. Thus, the purpose of the NPL is merely to identify releases of hazardous substances that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the

boundaries of such facilities or releases.¹ Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue; that is, the NPL release would include all releases evaluated as part of that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, *see* FR 40663 (September 8, 1983)).

Because the Agency does not formally define the geographic extent of releases (or sites) at the time of listing, there is no administrative process to "delist" allegedly uncontaminated areas of an NPL site (or to expand sites to follow the contamination where it has come to be located).² Such a process would be time-consuming, subject to constant re-verification, and wasteful of resources. Further, the NPL is only of limited significance, as it does not assign liability to any party. *See* Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96-848, 96th Cong., 2d Sess. 60 (1980), quoted at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

EPA regulations do provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). However, this inquiry focuses on an evaluation of the threat posed; it is not a requirement to define the boundaries of the release, and in any event is independent of the NPL listing. Moreover, it is generally impossible to discover the full extent of where the contamination "has come to be located" prior to completion of all necessary studies and remedial work at a site; indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

At the same time, however, the Agency notes that the RI/FS or Record of Decision (ROD) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, *based on information known at that time*. For example, EPA may evaluate (and list) a release over a 400-acre area, but the ROD may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) should also note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

EPA recognizes that the NPL process cannot be perfect, and it is possible that errors or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process. * * * [T]he NPL serves as a guide to EPA and does not determine liability or the need for response.

49 FR 37081 (September 21, 1984).³

III. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating risks presented in three potential "pathways" of human or environmental exposure: ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors "that are designed to encompass most aspects of the likelihood of exposure to a

hazardous substance through a release and the magnitude or degree of harm from such exposure": (1) factors that indicate the presence or likelihood of a release to the environment; (2) factors that indicate the nature and quantity of the substances presenting the potential threat; and (3) factors that indicate the human or environmental "targets" potentially at risk from the site. Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air" (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624, September 16, 1985), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of Health and Human Services has issued a health advisory which recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

All of the sites in today's final rule have been placed on the NPL based on their HRS scores.

States have the primary responsibility for identifying non-Federal sites, computing HRS scores, and submitting

¹ Although CERCLA section 101(9) sets out the definition of "facility" and not "release," those terms are often used interchangeably. (See CERCLA section 105(a)(8)(B), which defines the NPL as a list of "releases" as well as the highest priority "facilities.") (For ease of reference, EPA also uses the term "Site" interchangeably with "release" and "facility.")

² The Agency has already discussed its authority to follow contamination as far as it goes, and then to consider the release or facility for response purposes to be the entire area where the hazardous substances have come to be located. 54 FR 13298 (March 31, 1989).

³ See also *City of Stoughton, Wisc. v. U.S. EPA*, 858 F. 2d 747, 751 (D.C. Cir. 1988);

Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet * * * "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." *Eagle-Picher Industries v. EPA II*, 759 F. 2d [921.] at 932 [(D.C. Cir. 1985)].

candidate sites to the EPA Regional Offices. EPA Regional Offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional Offices may also consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing (and EPA's listing policies) and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify on the final NPL.

IV. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983). Where other authorities exist, placing the site on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen to defer certain types of sites from the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites deferred as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The Agency has solicited comment on a policy to expand deferral to other Federal and State authorities (53 FR 51415, December 21, 1988); however, that policy is not currently in effect and has not been applied to sites in this rule. The Agency has committed not to implement any part of an expanded deferral policy until public and Congressional concerns have been fully reviewed and analyzed,

and a decision reached on whether or not to implement such a policy.

The listing policies and statutory requirements of relevance to this final rule cover Resource Conservation and Recovery Act (RCRA) (U.S.C. 6901-6991i) sites, Federal facility sites, sites with "special study wastes," and mining waste sites, and are discussed below. These and other listing policies and statutory requirements have been explained in previous rulemakings, the latest being March 31, 1989 (54 FR 13296).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

On June 10, 1986 (51 FR 21054), EPA announced a decision on components of a policy for the listing or the deferral from listing on the NPL of several categories of non-Federal sites subject to RCRA Subtitle C corrective action authorities. Under the policy, sites not subject to RCRA Subtitle C corrective action authorities will continue to be placed on the NPL. Examples of such sites include:

- Facilities that ceased treating, storing, or disposing of hazardous waste prior to November 19, 1980 (the effective date of Phase I of the Subtitle C regulations) and to which the RCRA corrective action or other authorities of Subtitle C cannot be applied.
- Sites at which only materials exempted from the statutory or regulatory definition of solid waste or hazardous waste are managed.
- Contamination areas resulting from the activities of RCRA hazardous waste handlers to which RCRA Subtitle C corrective action authorities do not apply, such as hazardous waste generators of transporters, which are not required to have Interim Status or a final RCRA permit.

Further, the policy stated that certain RCRA sites at which Subtitle C corrective action authorities are available may also be listed if they meet the criterion for listing (i.e., an HRS score of 28.50 or greater) and they fall within one of the following categories:

- Facilities owned by persons who have demonstrated an inability to finance corrective action as evidenced by their invocation of the bankruptcy laws.
- Facilities that have lost authorization to operate, and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action.
- Sites, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake corrective action.

On August 9, 1988 (53 FR 30005), EPA announced a policy for determining whether RCRA facilities are unwilling to perform corrective actions, and therefore should be proposed to the NPL. Additionally, on August 9, 1988 (53 FR 30002), EPA requested comment on a draft policy for determining when an owner/operator should be considered unable to pay for addressing the contamination at a RCRA-regulated site; that draft policy is still under review.

On June 24, 1988 (53 FR 23978), EPA announced its intent to list RCRA sites in several other categories which the Agency considers appropriate for the NPL. These categories are non- or late filers, converters, protective filers, and sites holding RCRA permits issued before enactment of the Hazardous and Solid Waste Amendments (HSWA) of 1984. Consistent with this policy, 23 sites in these categories are being placed on the final NPL in a rule appearing elsewhere in today's Federal Register.

In this final rule, EPA is adding to the NPL four sites that are subject to RCRA Subtitle C corrective action authorities. These sites are not appropriate for deferral under the NPL/RCRA deferral policy because either the site owners are unable to finance corrective action, as evidenced by their invocation of the bankruptcy laws, or the sites are converters (i.e., their Part A permits have been withdrawn).

Releases from Federal Facility Sites

On June 10, 1986 (51 FR 21054), the Agency announced a decision on components of a policy for the listing or the deferral from listing on the NPL of several categories of non-Federal sites subject to the RCRA Subtitle C corrective action authorities. The policy was intended to reflect RCRA's broadened corrective action authorities as a result of HSWA. In announcing the RCRA policy, the Agency reserved for a later date the question of whether this or another policy would be applied to Federal facility sites that include one or more RCRA hazardous waste management units, and thus are subject to RCRA Subtitle C corrective action authorities.

The Agency interprets SARA and its legislative history to indicate that Congress clearly intended that Federal facilities be placed on the NPL if they meet the prescribed eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility is also subject to the corrective action authorities of RCRA Subtitle C. In that way, cleanup, if appropriate, could be effected at those sites under CERCLA. The Agency's statement of this policy,

and the reasons behind it, are fully discussed at 54 FR 10520 (March 13, 1989). Thus, the June 10, 1986 RCRA deferral policy (51 FR 21057) applicable to private sites is not applicable to Federal facility sites.

Federal facility sites are placed in a separate section of the NPL. This rule adds 11 Federal facility sites to the final NPL, bringing the total number of final Federal facility sites to 52. Currently, 63 Federal facility sites are proposed to the NPL.

Releases of Special Study Wastes

Section 105(g) of CERCLA, as amended by SARA, requires EPA to consider certain factors before adding sites involving RCRA "special study wastes" to the NPL. Section 105(g) applies to sites that (1) were not on or proposed for the NPL as of October 17, 1986 and (2) contain sufficient quantities of special study wastes as defined under RCRA sections 3001(b)(2) [drilling fluids], 3001(b)(3)(A)(ii) [mining wastes], and 3001(b)(3)(A)(iii) [cement kiln dusts]. Before these sites can be added to the NPL, section 105(g) requires that the following information be considered:

- The extent to which the HRS score for the facility is affected by the presence of the special study waste at or released from the facility.

- Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from, the facility; the extent of or potential for release of such hazardous constituents; the exposure or potential exposure to human population and environment; and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at the facility.

This final rule includes five sites containing or potentially containing special study wastes subject to the provisions of section 105(g). EPA has placed in the dockets addenda that evaluate for each site the information called for in section 105(g). The addenda indicate the special study wastes present a threat to human health and the environment, and that the sites should be added to the NPL.

CERCLA section 125, as amended by SARA, addresses special study wastes described in RCRA section 3001(b)(3)(A)(i) [fly ash and related wastes]. No sites in this rule are subject to section 125.

Releases from Mining Sites

The Agency's position is that mining wastes may be hazardous substances, pollutants, or contaminants under

CERCLA and, therefore, mining waste sites are eligible for the NPL. This position was affirmed in 1985 by the United States Court of Appeals for the District of Columbia Circuit (*Eagle-Picher Industries, Inc. v. EPA*, 759 F. 2d 922 (D.C. Cir 1985)).

In addition, Agency policy statements regarding including mining sites on the NPL are located at 53 FR 23988, 23993 (June 24, 1988); 54 FR 10512, 10514-16 (March 13, 1989); 54 FR 13296, 13300-01, 13302-03 (March 31, 1989). The Agency is including three mining sites in today's final rule.

V. Disposition of Sites in Today's Final Rule

This final rule promulgates 70 sites (Table 1) and drops 4 sites from several proposed rulemakings. These 74 sites are from the following proposed updates:

- Update #2 (49 FR 40320, October 15, 1984): 2 sites.
- Update #3 (50 FR 14115, April 10, 1985): 1 site.
- Update #5 (51 FR 21099, June 10, 1986): 6 sites.
- Update #6 (52 FR 2492, January 22, 1987): 14 sites.
- Update #7 (53 FR 23988, June 24, 1988): 47 sites.
- Update #8 (54 FR 19526, May 5, 1989): 4 sites.

TABLE 1.—NATIONAL PRIORITIES LIST, NEW FINAL SITES (BY RANK), OCTOBER 1989

	NPL Group Rank	State	Site Name	City/County
1.....	44	PA	Publicker Industries Inc.....	Philadelphia
2.....	70	WA	General Electric (Spokane Shop).....	Spokane
3.....	129	PA	Raymark.....	Hatboro
4.....	164	ID	Kerr-McGee Chemical (Soda Springs).....	Soda Springs
4.....	190	IL	Woodstock Municipal Landfill.....	Woodstock
4.....	199	CT	Precision Plating Corp.....	Vernon
5.....	214	MO	Wheeling Disposal Service Co. Lf.....	Amazonia
6.....	256	PA	Tonolli Corp.....	Nesquehoning
6.....	265	CT	Gallup's Quarry.....	Plainfield
6.....	271	PA	Berks Landfill.....	Spring Township
6.....	274	CA	Pacific Coast Pipe Lines.....	Fillmore
6.....	277	PA	Occidental Chem/Firestone Tire.....	Lower Pottsgrove Township
6.....	297	FL	Agrico Chemical Co.....	Pensacola
7.....	318	VT	Darling Hill Dump.....	Lyndon
7.....	334	PA	River Road Lf/Waste Mngmnt, Inc.....	Hermitage
7.....	343	FL	Standard Auto Bumper Corp.....	Hialeah
8.....	363	PA	A.I.W. Frank/Mid-County Mustang.....	Exton
8.....	366	PA	Commodore Semiconductor Group.....	Lower Providence Township
8.....	368	IL	Lenz Oil Service, Inc.....	Lemont
8.....	371	PA	Novak Sanitary Landfill.....	South Whitehall Township
8.....	375	NJ	South Jersey Clothing Co.....	Minotola
8.....	381	MI	Barrels, Inc.....	Lansing
8.....	400	VT	BFI Sanitary Landfill (Rockingham).....	Rockingham
9.....	434	PA	Jacks Creek/Sitkin Smelting & Ref.....	Maitland
10.....	469	PA	AMP, Inc. (Glen Rock Facility).....	Glen Rock
10.....	470	NC	JFD Electronics/Channel Master.....	Oxford

TABLE 1.—NATIONAL PRIORITIES LIST, NEW FINAL SITES (BY RANK), OCTOBER 1989—Continued

	NPL Group ¹ Rank	State	Site Name	City/County
10.....	473	FL	Sydney Mine Sludge Ponds.....	Brandon
10.....	474	NM	Cimarron Mining Corp.....	Carrizozo
10.....	489	MO	St Louis Airport/HIS/Fut Coatings.....	St. Louis County
10.....	497	RI	Rose Hill Regional Landfill.....	South Kingstown
11.....	504	CT	Barkhamsted-New Hartford Landfill.....	Barkhamsted
11.....	513	FL	Chemform, Inc.....	Pompano Beach
11.....	516	SC	Lexington County Landfill Area.....	Cayce
11.....	519	UT	Utah Power&Light/American Barrel.....	Salt Lake City
11.....	546	VA	Saunders Supply Co.....	Chuckatuck
12.....	553	SC	Rochester Property.....	Travelers Rest
12.....	574	VT	Tansitor Electronics, Inc.....	Bennington
12.....	585	DE	Dover Gas Light Co.....	Dover
12.....	590	PA	North Penn—Area 2.....	Hatfield
12.....	596	NM	Pagano Salvage.....	Los Lunas
13.....	601	CA	Fresno Municipal Sanitary Landfill.....	Fresno
13.....	615	CA	Jasco Chemical Corp.....	Mountain View
13.....	619	VA	Dixie Caverns County Landfill.....	Salem
13.....	635	PA	Bell Landfill.....	Terry Township
14.....	662	WI	Sauk County Landfill.....	Excelsior
14.....	677	CT	Durham Meadows.....	Durham
14.....	687	MO	Kem-Pest Laboratories.....	Cape Girardeau
14.....	696	MI	Albion-Sheridan Township Landfill.....	Albion
15.....	736	NC	Geigy Chemical Corp (Aberdeen PIt).....	Aberdeen
16.....	752	LA	D.L. Mud, Inc.....	Abbeville
16.....	762	CA	Montrose Chemical Corp.....	Torrance
16.....	785	CA	Synertek, Inc. (Building 1).....	Santa Clara
16.....	793	FL	Wingate Road Munic Incinerat Dump.....	Fort Lauderdale
17.....	822	PA	Eastern Diversified Metals.....	Hometown
17.....	840	NJ	Witco Chemical Corp. (Oakland PIt).....	Oakland
18.....	870	GA	Firestone Tire (Albany Plant).....	Albany
18.....	889	TN	Mallory Capacitor Co.....	Waynesboro
19.....	910	DE	Sussex County Landfill No. 5.....	Laurel
19.....	927	PA	CryoChem, Inc.....	Worman

* State top priority site.

¹ Sites are placed in groups corresponding to groups of 50 on the final NPL.
Number of New Final Sites: 59.

NATIONAL PRIORITIES LIST, FEDERAL FACILITY SITES, NEW FINAL (BY GROUP), OCTOBER 1989

NPL Group ¹	State	Site Name	City/County
1.....	WA	Hanford 200-Area (USDOE).....	Benton County
1.....	WA	Hanford 300-Area (USDOE).....	Benton County
1.....	CO	Rocky Flats Plant (USDOE).....	Golden
2.....	PA	Naval Air Develop Center (8 Areas).....	Warminster Township
2.....	OH	Wright-Patterson Air Force Base.....	Dayton
6.....	WA	Hanford 100-Area (USDOE).....	Benton County
12.....	WA	Hanford 1100-Area (USDOE).....	Benton County
14.....	PR	Naval Security Group Activity.....	Sabana Seca
15.....	WA	Naval Undersea Warf Sta (4 Areas).....	Keyport
15.....	NC	Camp Lejeune Military Reservation.....	Onslow County
17.....	MD	Aber Prov Ground-Michaelsville Lf.....	Aberdeen

* State top priority site.

¹ Sites are placed in groups corresponding to groups of 50 on the final NPL.
Number of New Final Federal Facility Sites: 11.

EPA read all comments received on these sites, including late comments. In past rules, EPA responded even to late comments. However, given the volume and number of late comments received and the need to make final decisions on all currently proposed sites prior to the date that the revised HRS takes effect,

EPA was not able to respond to all late comments received for sites in this rule. EPA has responded (in the Support Document) to those comments received no later than October 31, 1988 for all sites included in this final rule which were proposed in Updates #2, 3, 5, 6, and 7, and to those comments received

no later than September 12, 1989 for sites in this final rule which were proposed in Update #8. (EPA had previously indicated at the time of proposal of Update #7 and Update #8 that it may no longer be able to consider late comments (53 FR 23990, June 24, 1988 and 54 FR 19527, May 5, 1989)).

Although EPA has not responded to all late comments, it has read all late comments, and has endeavored to respond in the Support Document to those late comments which bring to the Agency's attention a fundamental error in the scoring of a site. In addition, the Agency has routinely responded to late comments that result from EPA correspondence which provided commenters with more recent data or requested that the commenters be more specific in their comments.

Based on the comments received on the proposed sites, as well as investigation by EPA and the States (generally in response to comment), EPA recalculated the HRS scores for individual sites where appropriate. Where the public comments or additional information dropped a score below 28.50, the site has been removed from the NPL. EPA did not spend the additional resources to determine a new score for dropped sites; once the data indicated that a score would fall below 28.50, and no new information or comments suggested a higher score, EPA ceased the time-consuming process of evaluating the comments in detail and of rescoring the site. Rather, EPA has simply provided the rationale for its decision to drop each applicable site. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List—Final Rule 10/04/89."

Resource Conservation and Recovery Act (RCRA) Sites

Four sites are subject to Subtitle C corrective action authorities, but either

the site owner has invoked the protection of the bankruptcy laws, or the part A permit has been withdrawn (converter status). The sites are being added to the final NPL consistent with the NPL/RCRA listing policy:

- Firestone Tire and Rubber Co. (Albany Plant), Albany, GA (converter)
- Lenz Oil Service, Inc., Lemont, IL (bankruptcy)
- AMP, Inc., (Glen Rock Facility), Glen Rock, PA (converter)
- Tonolli Corp., Nesquehoning, PA (bankruptcy)

Federal Facility Sites

There are 11 Federal facility sites being added to the NPL (Table 1).

Special Study Waste Sites

Five sites containing or possibly containing special study wastes are being added to the NPL in this rule. The sites and the special study wastes are:

- Dover Gas Light Co., Dover, DE (coal tar)
- Kerr-McGee Chemical Corp. (Soda Springs Plant), Soda Springs, ID (mining wastes)
- D.L. Mud, Inc., Abbeville, LA (oil drilling mud and produced waters)
- Cimarron Mining Corp., Carrizozo, NM (mining wastes)
- Jacks Creek/Sitkin Smelting and Refining, Inc., Maitland, PA (mining wastes)

Mining Sites

Three noncoal mining sites are being added to the NPL in this final rule:

- Kerr-McGee Chemical Corp. (Soda Springs Plant), Soda Springs, ID
- Cimarron Mining Corp., Carrizozo, NM
- Jacks Creek/Sitkin Smelting and Refining, Inc., Maitland, PA

EPA has examined whether these mining sites might be satisfactorily

addressed using State-share monies from the Abandoned Mine Land Reclamation (AMLR) Fund under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Cimarron Mining Corp. operated after the August 7, 1977 SMCRA enactment date, and therefore is not eligible for SMCRA AMLR funds. The Kerr-McGee (Soda Springs Plant) site is located in Idaho, which does not have an AMLR program. The other site, Jacks Creek/Sitkin Smelting and Refining, Inc., was abandoned prior to the enactment date of SMCRA. Since Pennsylvania has an approved AMLR program, the site is potentially eligible for SMCRA funds. However, available information suggests the site will not be addressed under SMCRA in the foreseeable future. Information outlining the State's position on use of AMLR funds at the site is available in the docket.

Score Revisions

EPA has revised the HRS scores for 19 sites based on its review of comments and additional information developed by EPA and the States (Table 2). Some of the changes have placed the sites in different groups of 50 sites. For four of these sites, the public comments and/or additional information have resulted in scores below the cut-off of 28.50. Accordingly, these four sites are being dropped from the proposed NPL at this time.

- GBF Inc. Dump, Antioch, CA
- Pigeon Point Landfill, New Castle, DE
- Stauffer Chemical Co. (Chicago Heights Plant), Chicago Heights, IL
- McCarty's Bald Knob Landfill, Mt. Vernon, IN

TABLE 2.—SITES WITH HRS SCORE CHANGES

State/Site Name	Location	HRS Score ¹	
		Proposed	Final
CA: GBF, Inc., Dump	Antioch	32.04	*
CA: Montrose Chemical Corp.	Torrance	33.85	32.10
CT: Barkhamsted-New Hartford Landfill	Barkhamsted	52.00	38.05
DE: Dover Gas Light Co.	Dover	42.24	35.57
DE: Pigeon Point Landfill	New Castle	37.93	*
GA: Firestone Tire & Rubber Co. (Albany Plant)	Albany	35.39	30.08
IL: Stauffer Chemical Co. (Chicago Heights Plant)	Chicago Heights	31.14	*
IN: McCarty's Bald Knob Landfill	Mt. Vernon	35.39	*
MD: Aberdeen Proving Ground (Michaelsville Landfill)	Aberdeen	31.45	31.09
MO: St. Louis Airport/Hazelwood Interim Storage/Futura Coatings Co.	St. Louis County	37.79	38.31
MO: Wheeling Disposal Service Co. Landfill	Amazonia	29.85	48.58
NC: Camp Lejeune Military Reservation	Onslow County	36.84	33.02
NC: JFD Electronics/Channel Master	Oxford	39.11	39.03
PA: Novak Sanitary Landfill	South Whitehall Twp	42.34	42.31
PA: Publiker Industries, Inc.	Philadelphia	59.99	59.06
SC: Rochester Property	Travelers Rest	41.34	36.72
VA: Dixie Caverns Sanitary Landfill	Salem	34.12	35.27
VA: Saunders Supply Co.	Chuckatuck	55.57	36.88
VT: Darling Hill Dump	Lyndon	45.91	43.92

¹ * = score below 28.50.

Name Revisions

The names of two sites addressed in this final rule have been changed in response to information received during the comment period. The changes are intended to reflect more accurately the location, nature, or potential sources of contamination at the site:

- Camp Lejeune Marine Corps Base, Onslow County, NC changed to Camp Lejeune Military Reservation

- Ametek, Inc. (Hunter Spring Division), Hatfield, PA changed to North Penn—Area 2

VI. Disposition of All Proposed Sites/ Federal Facility Sites

To date, EPA has proposed nine major updates to the NPL as well as special update of two ATSDR sites. Taking into account this rule and the additional NPL final rule published elsewhere in today's Federal Register, 150 sites and 63

Federal facility sites continue to be proposed pending completion of response to comment, resolution of technical issues and resolution of various policy issues (Table 3). All sites that remain proposed will be considered for future final rules. Although these sites remain proposed, the comment periods have not been extended or reopened.

TABLE 3.—NPL PROPOSALS

Update No.	Date/Federal Register citation	Number of sites/Federal facility sites	
		Proposed	Remaining proposed
1	9/8/83; 48 FR 40674	132/1	1/0
2	10/15/84; 49 FR 40320	208/36	17/3
3	4/10/85; 50 FR 14115	26/6	0/1
4	9/18/85; 50 FR 37950	38/3	1/2
5	6/10/86; 51 FR 21099	43/2	8/0
6	1/22/87; 52 FR 2492	63/1	13/0
7	6/24/88; 53 FR 23988	215/14	103/5
8	5/5/89; 54 FR 19526	10/0	5/0
9	7/14/89; 54 FR 29820	0/52	0/52
ATSDR	8/16/89; 54 FR 33846	2/0	2/0
Total		735/115	150/63

VII. Contents of the NPL

The 70 new sites added to the NPL in today's rule (Table 1) have been incorporated into the NPL in order of their HRS scores except where EPA modified the order to reflect top priorities designated by the States, as discussed in greater detail in previous rulemakings, the most recent on March 31, 1989 (54 FR 13296).

The NPL appears at the end of this final rule and will be codified as part of Appendix B to the NCP. Sites on the NPL are arranged according to their scores on the HRS. The NPL is presented in groups of 50 sites to emphasize the minor differences in HRS scores do not necessarily represent significantly different levels of risk. Except for the first group, the score range within the groups, as indicated in the list, is less than 4 points. EPA considers the sites within a group to have approximately the same priority for response actions. For convenience, the sites are numbered.

One site—the Lansdowne Radiation Site in Lansdowne, PA—was placed on the NPL on September 16, 1985 (50 FR 37630) because it met the requirements of the NCP at section 300.66(b)(4), as explained in section III of this rule; it has an HRS score less than 28.50, and appears at the end of the list.

This rule adds 11 new sites to the Federal facility section of the NPL by group number.

Each entry on the NPL contains the name of the facility and the State and city or county in which it is located. In the past, each entry was accompanied by one or more notations reflecting the status of response and cleanup activities at the site at the time this list was prepared. EPA is developing a report summarizing response activities at NPL sites. In the interim, information on activities at the new final sites is available upon request to the appropriate Regional Office.

VIII. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NCP. EPA believes that the kinds of economic effects associated with this revision are generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to adding these 70 sites to the NPL can be characterized in terms of the

conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in this rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or

all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site ¹
RI/FS.....	1,100,000
Remedial Design.....	750,000
Remedial Action.....	* 13,500,000
Net present value of O&M ²	* 3,770,000

¹ 1988 U.S. Dollars.

² Includes State cost-share.

³ Assumes cost of O&M over 30 years, \$400,000 for the first year and 10% discount rate.

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA.

Costs to States associated with today's final rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites which are publicly-owned but not publicly-

operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period of participation. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the 59 non-Federal sites added to the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately \$100 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately \$189 million.

Placing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment placing additional sites on the NPL are increased health and environmental protection as a result

of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets may also give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

IX. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The placing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. Placing a site on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 59 non-Federal sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste

treatment and disposal, Water pollution control, Water supply.

Dated: September 21, 1989.

Robert H. Wayland III,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

APPENDIX B to PART 300

2. Appendix B of Part 300 is revised to read as set forth below.

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989

NPL Rank	EPA Reg	State	Site Name	City/County
Group 1 (HRS Scores 75.60 - 58.54)				
1	02	NJ	Lipari Landfill	Pitman
2	03	DE	Tybouts Corner Landfill*	New Castle County
3	03	PA	Bruin Lagoon	Bruin Borough
4	02	NJ	Helen Kramer Landfill	Mantua Township
5	01	MA	Industri-Plex	Woburn
6	02	NJ	Price Landfill*	Pleasantville
7	02	NY	Pollution Abatement Services*	Oswego
8	07	IA	LaBounty Site	Charles City
9	03	DE	Army Creek Landfill	New Castle County
10	02	NJ	CPS/Madison Industries	Old Bridge Township
11	01	MA	Nyanza Chemical Waste Dump	Ashland
12	02	NJ	GEMS Landfill	Gloucester Township
13	05	MI	Berlin & Farro	Swartz Creek
14	01	MA	Baird & McGuire	Holbrook
15	02	NJ	Lone Pine Landfill	Freehold Township
16	01	NH	Somersworth Sanitary Landfill	Somersworth
17	05	MN	FMC Corp. (Fridley Plant)	Fridley
18	06	AR	Vertac, Inc.	Jacksonville
19	01	NH	Keefe Environmental Services	Epping
20	08	MT	Silver Bow Creek/Butte Area	Sil Bow/Deer Lodge
21	08	SD	Whitewood Creek*	Whitewood
22	06	TX	French, Ltd.	Crosby
23	05	MI	Liquid Disposal, Inc.	Utica
24	01	NH	Sylvester*	Nashua
25	03	PA	Tyson's Dump	Upper Merion Township
26	03	PA	McAdoo Associates*	McAdoo Borough
27	06	TX	Motco, Inc.	La Marque
28	05	OH	Arcanum Iron & Metal	Darke County
29	08	MT	East Helena Site	East Helena
30	06	TX	Sikes Disposal Pits	Crosby
31	04	AL	Triana/Tennessee River	Limestone/Morgan
32	09	CA	Stringfellow*	Glen Avon Heights
33	01	ME	McKin Co.	Gray
34	06	TX	Crystal Chemical Co.	Houston
35	02	NJ	Bridgeport Rental & Oil Services	Bridgeport
36	08	CO	Sand Creek Industrial	Commerce City
37	06	TX	Geneva Industries/Fuhrmann Energy	Houston
38	01	MA	W.R. Grace & Co., Inc. (Acton Plant)	Acton
39	05	MN	Reilly Tar (St. Louis Park Plant)*	St. Louis Park
40	05	MN	New Brighton/Arden Hills	New Brighton
41	04	FL	Schuykill Metals Corp.	Plant City
42	02	NJ	Vineland Chemical Co., Inc.	Vineland
43	02	NJ	Burnt Fly Bog	Marlboro Township
44	03	PA	Publicker Industries Inc.	Philadelphia
45	02	NY	Old Bethpage Landfill	Oyster Bay
46	02	NJ	Shieldalloy Corp.	Newfield Borough
47	04	FL	Reeves Southeast Galvanizing Corp.	Tampa
48	08	MT	Anaconda Co. Smelter	Anaconda
49	10	WA	Western Processing Co., Inc.	Kent
50	05	WI	Omega Hills North Landfill	Germantown
Group 2 (HRS Scores 58.41—55.97, except for state top priority sites)				
51	04	FL	American Creosote (Pensacola Pit)	Pensacola
52	02	NJ	Caldwell Trucking Co.	Fairfield
53	02	NY	GE Moreau	South Glen Falls
54	06	OK	Tar Creek (Ottawa County)	(Ottawa County)
55	07	KS	Cherokee County	Cherokee County
56	05	IN	Seymour Recycling Corp.*	Seymour
57	05	OH	United Scrap Lead Co., Inc.	Troy

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
58	04	FL	Peak Oil Co./Bay Drum Co.	Tampa
59	02	NJ	Brick Township Landfill	Brick Township
60	02	NJ	Brook Industrial Park	Bound Brook
61	05	MI	American Anodco, Inc.	Ionia
62	10	WA	Frontier Hard Chrome, Inc.	Vancouver
63	05	WI	Janesville Old Landfill	Janesville
64	05	MI	Nothnaire Plating	Cadillac
65	04	SC	Kalama Specialty Chemicals	Beaufort
66	04	SC	Independent Nail Co.	Beaufort
67	05	WI	Janesville Ash Beds	Janesville
68	04	FL	Davie Landfill	Davie
69	05	OH	Miami County Incinerator	Troy
70	10	WA	General Electric (Spokane Shop)	Spokane
71	04	FL	Gold Coast Oil Corp.	Miami
72	09	AZ	Tucson International Airport Area	Tucson
73	05	IN	International Minerals (E. Plant)	Terre Haute
74	05	WI	Wheeler Pit	La Prairie Township
75	09	CA	Operating Industries, Inc. Lndfill	Monterey Park
76	02	NY	Wide Beach Development	Brant
77	09	CA	Iron Mountain Mine	Redding
78	02	NJ	Scientific Chemical Processing	Carlstadt
79	05	MI	Gratiot County Landfill*	St. Louis
80	01	RI	Picillo Farm*	Coventry
81	01	MA	New Bedford Site*	New Bedford
82	06	LA	Old Inger Oil Refinery*	Darrow
83	05	OH	Chem-Dyne*	Hamilton
84	04	SC	SCRDI Bluff Road*	Columbia
85	01	CT	Laurel Park, Inc.*	Naugatuck Borough
86	08	CO	Marshall Landfill*	Boulder County
87	05	IL	Outboard Marine Corp.*	Waukegan
88	06	NM	South Valley*	Albuquerque
89	01	VT	Pine Street Canal*	Burlington
90	03	WV	West Virginia Ordnance*	Point Pleasant
91	07	MO	Ellisville Site*	Ellisville
92	08	ND	Arsenic Trioxide Site*	Southeastern ND
93	07	IA	Aidex Corp.*	Council Bluffs
94	05	WI	N.W. Mauthe Co., Inc.*	Appleton
95	04	TN	North Hollywood Dump*	Memphis
96	04	KY	A.L. Taylor (Valley of Drums)*	Brooks
97	09	GU	Ordot Landfil*	Guam
98	04	MS	Flowood Site*	Flowood
99	08	UT	Rose Park Sludge Pit*	Salt Lake City
100	07	KS	Arkansas City Dump*	Arkansas City
101	08	CO	California Gulch	Leadville
102	02	NJ	D'Imperio Property	Hamilton Township
103	05	MN	Oakdale Dump	Oakdale
104	05	IL	Parsons Casket Hardware Co.	Belvidere
105	05	IL	A & F Material Reclaiming, Inc.	Greenup
106	03	PA	Douglassville Disposal	Douglassville
107	05	MN	Koppers Coke	St. Paul
108	01	MA	Plymouth Harbor/Cannon Eng. Corp.	Plymouth
109	10	ID	Bunker Hill Mining & Metallurg	Smelterville
110	02	NY	Hudson River PCBs	Hudson River
111	02	NJ	Universal Oil Products (Chem Div)	East Rutherford
112	09	CA	Aerojet General Corp.	Rancho Cordova
113	10	WA	Com Bay, South Tacoma Channel	Tacoma
114	03	PA	Osborne Landfill	Grove City
115	08	UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City
116	01	CT	Old Southington Landfill	Southington
117	02	NY	Syosset Landfill	Oyster Bay
118	02	NY	Circuitron Corp.	East Farmingdale
119	09	AZ	Nineteenth Avenue Landfill	Phoenix
120	10	OR	Teledyne Wah Chang	Albany
121	10	WA	Midway Landfill	Kent
122	02	NY	Sinclair Refinery	Wellsville
123	04	AL	Mowbray Engineering Co.	Greenville
124	05	MI	Spiegelberg Landfill	Green Oak Township
125	04	FL	Miami Drum Services	Miami
126	02	NJ	Reich Farms	Pleasant Plains
127	10	ID	Union Pacific Railroad Co.	Pocatello
128	02	NJ	South Brunswick Landfill	South Brunswick
129	03	PA	Raymark	Hatboro
130	04	AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh
131	04	FL	Kassauf-Kimerling Battery	Tampa
132	05	IL	Wauconda Sand & Gravel	Wauconda
133	05	MI	Bofors Nobel, Inc.	Muskegon
134	06	TX	Bailey Waste Disposal	Bridge City
135	01	NH	Ottati & Goss/Kingston Steel Drum	Kingston
136	05	MI	Ott/Story/Cordova Chemical Co.	Dalton Township

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
137	05	MI	Thermo-Chem, Inc.	Muskegon
138	09	CA	Brown & Bryant, Inc. (Arvin Plant)	Arvin
139	03	VA	Greenwood Chemical Co.	Newtown
140	02	NJ	NL Industries	Perdicktown
141	05	MN	St. Regis Paper Co.	Cass Lake
142	04	NC	Aberdeen Pesticide Dumps	Aberdeen
143	01	VT	Burgess Brothers Landfill	Woodford
144	02	NJ	Ringwood Mines/Landfill	Ringwood Borough
145	04	FL	Whitehouse Oil Pits	Whitehouse
146	04	GA	Hercules 009 Landfill	Brunswick
147	02	NY	Joes Sanitation	Hyde Park
148	05	MI	Velsicol Chemical (Michigan)	St. Louis
149	05	OH	Summite National	Deerfield Township
150	02	NY	Love Canal	Niagara Falls

Group 4 (HRS Scores 52.15—49.09)

151	03	DE	Coker's Sanitation Service Lndfls.	Kent County
152	05	MI	Rockwell International (Allegan)	Allegan
153	05	MN	Pine Bend Sanitary Landfill	Dakota County
154	07	IA	Lawrence Todtz Farm	Comanche
155	05	IN	Fisher-Calo	LePorte
156	04	FL	Pioneer Sand Co.	Warrington
157	05	MI	Springfield Township Dump	Davisburg
158	03	PA	Hranica Landfill	Buffalo Township
159	04	NC	Martin-Marietta, Sodyeco, Inc.	Charlotte
160	03	PA	Hellertown Manufacturing Co.	Hellertown
161	04	FL	Zellwood Ground Water Contamin	Zellwood
162	05	MI	Packaging Corp. of America	Filer City
163	05	WI	Muskego Sanitary Landfill	Muskego
164	10	ID	Kerr-McGee Chemical (Soda Springs)	Soda Springs
165	02	NY	Hooker (S Area)	Niagara Falls
166	03	PA	Lindane Dump	Harrison Township
167	08	CO	Central City-Clear Creek	Idaho Springs
168	02	NJ	Ventron/Velsicol	Wood Ridge Borough
169	04	FL	Taylor Road Landfill	Seffner
170	01	RI	Western Sand & Gravel	Burrillville
171	02	NY	Rosen Brothers Scrap Yard/Dump	Cortland
172	04	SC	Koppers Co Inc (Florence Plant)	Florence
173	02	NJ	Maywood Chemical Co.	Maywood/Rochelle Park
174	02	NJ	Nascolite Corp.	Millville
175	05	OH	Industrial Excess Landfill	Uniontown
176	06	OK	Hardage/Griner	Griner
177	05	MI	Rose Township Dump	Rose Township
178	05	MN	Waste Disposal Engineering	Andover
179	02	NY	Liberty Industrial Finishing	Farmingdale
180	02	NJ	Kin-Buc Landfill	Edison Township
181	05	IN	Waste, Inc., Landfill	Michigan City
182	05	OH	Bowers Landfill	Circleville
183	06	TX	Brio Refining, Inc.	Friendswood
184	02	NJ	Ciba-Geigy Corp.	Toms River
185	05	MI	Butterworth #2 Landfill	Grand Rapids
186	02	NJ	American Cynamid Co.	Bound Brook
187	03	PA	HeLeva Landfill	North Whitehall Township
188	02	NJ	Ewan Property	Shamong Township
189	02	NY	Batavia Landfill	Batavia
190	05	IL	Woodstock Municipal Landfill	Woodstock
191	05	MN	Boise Cascade/Onan/Medtronics	Fridley
192	01	RI	Landfill & Resource Recovery	North Smithfield
193	03	PA	Butler Mine Tunnel	Pittston
194	04	FL	Northwest 58th Street Landfill	Hialeah
195	02	NJ	Delilah Road	Egg Harbor Township
196	03	PA	Mill Creek Dump	Erie
197	02	NJ	Glen Ridge Radium Site	Glen Ridge
198	02	NJ	Montclair/West Orange Radium Site	Montclair/W Orange
199	01	CT	Precision Plating Corp.	Vernon
200	04	FL	Sixty-Second Street Dump	Tampa

Group 5 (HRS Scores 49.09 - 46.77)

201	05	MI	G&H Landfill	Utica
202	01	VT	Bennington Municipal Sanitary Lfl.	Bennington
203	04	NC	Celanese (Shelby Fiber Operations)	Shelby
204	02	NJ	Meta tec/Aerosystems	Franklin Borough
205	05	WI	Schmalz Dump	Harrison
206	05	MI	Motor Wheel, Inc.	Lansing
207	09	CA	Southern Calif Edison (Visalia)	Visalia
208	02	NJ	Lang Property	Pemberton Township
209	06	TX	Stewco, Inc.	Waskom
210	02	NJ	Sharkey Landfill	Parsippany/Troy Hls

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
211	09	CA	Selma Treating Co.	Selma
212	06	LA	Cleve Reber	Sorrento
213	05	IL	Velsicol Chemical (Illinois)	Marshall
214	07	MO	Wheeling Disposal Service Co. Lf	Amazonia
215	05	MI	Tar Lake	Mancelona Township
216	02	NY	Johnstown City Landfill	Town of Johnstown
217	04	NC	NC State U (Lot 86, Farm Unit #1)	Raleigh
218	08	CO	Lowry Landfill	Arapahoe County
219	05	MN	MacGillis & Gibbs/Bell Lumber	New Brighton
220	03	PA	Hunterstown Road	Straban Township
221	03	MD	Woodlawn County Landfill	Woodlawn
222	05	WI	Hechimovich Sanitary Landfill	Williamstown
223	07	IA	Mid-America Tanning Co.	Sergeant Bluff
224	07	NE	Lindsay Manufacturing Co.	Lindsay
225	02	NJ	Combe Fill North Landfill	Mount Olive Twp
226	01	MA	Re-Solve, Inc.	Dartmouth
227	02	NJ	Goose Farm	Plumstead Township
228	04	TN	Velsicol Chem (Hardeman County)	Toone
229	02	NY	York Oil Co.	Moir
230	04	FL	Sapp Battery Salvage	Cottontale
231	04	SC	Wamchem, Inc.	Burton
232	02	NJ	Chemical Leaman Tank Lines, Inc.	Bridgeport
233	05	WI	Master Disposal Service Landfill	Brookfield
234	07	KS	Doepke Disposal (Holliday)	Johnson County
235	02	NJ	Florence Land Recontouring Lndfil	Florence Township
236	01	RI	Davis Liquid Waste	Smithfield
237	01	MA	Charles-George Reclamation Lndfil	Tyngsborough
238	02	NJ	King of Prussia	Winslow Township
239	03	VA	Chisman Creek	York County
240	05	OH	Nease Chemical	Salem
241	08	CO	Eagle Mine	Minturn/Redcliff
242	02	NJ	Chemical Control	Elizabeth
243	04	NC	Charles Macon Lagoon & Drum Stor	Cordova
244	04	SC	Leonard Chemical Co., Inc.	Rock Hill
245	05	OH	Allied Chemical & Ironton Coke	Ironton
246	05	MI	Verona Well Field	Battle Creek
247	07	MO	Lee Chemical	Liberty
248	01	CT	Beacon Heights Landfill	Beacon Falls
249	04	AL	Stauffer Chem (Cold Creek Plant)	Bucks
250	05	MN	Burlington Northern (Brainerd)	Brainerd/Baxter

Group 6 (HRS Scores 46.72—44.87)

251	05	MI	Torch Lake	Houghton County
252	01	RI	Central Landfill	Johnston
253	03	PA	Malvern TCE	Malvern
254	02	NY	Facet Enterprises, Inc.	Elmira
255	03	DE	Delaware Sand & Gravel Landfill	New Castle County
256	03	PA	Tonolli Corp.	Nesquehoning
257	04	NC	National Starch & Chemical Corp.	Salisbury
258	03	PA	MW Manufacturing	Valley Township
259	03	VA	C & R Battery Co., Inc.	Chesterfield County
260	04	TN	Murray-Ohio Dump	Lawrenceburg
261	05	IN	Envirochem Corp.	Zionsville
262	05	IN	MIDCO I	Gary
263	05	OH	Ormet Corp.	Hannibal
264	05	OH	South Point Plant	South Point
265	01	CT	Gallup's Quarry	Plainfield
266	03	PA	Whitmoyer Laboratories	Jackson Township
267	04	FL	Coleman-Evans Wood Preserving Co.	Whitehouse
268	02	NJ	Dayco Corp./L.E. Carpenter Co.	Wharton Borough
269	03	PA	Shriver's Corner	Straban Township
270	03	PA	Dorney Road Landfill	Upper Macungie Township
271	03	PA	Berks Landfill	Spring Township
272	05	IN	Northside Sanitary Landfill, Inc.	Zionsville
273	05	IL	Interstate Pollution Control, Inc.	Rockford
274	09	CA	Pacific Coast Pipe Lines	Fillmore
275	02	NJ	Global Sanitary Landfill	Old Bridge Township
276	04	FL	Florida Steel Corp.	Indiantown
277	03	PA	Occidental Chem/Firestone Tire	Lower Pottsgrove Township
278	03	VA	Culpeper Wood Preservers, Inc.	Culpeper
279	05	IL	Pagel's Pit	Rockford
280	05	MN	University Minn Rosemount Res Cen	Rosemount
281	05	MN	Freeway Sanitary Landfill	Burnsville
282	05	WI	Tomah Municipal Sanitary Landfill	Tomah
283	09	AZ	Litchfield Airport Area	Goodyear/Avondale
284	09	CA	Firestone Tire (Salinas Plant)	Salinas
285	02	NJ	Spence Farm	Plumstead Township

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
286	06	AR	Mid-South Wood Products	Mena
287	04	MS	Newsom Brothers/Old Reichhold	Columbia
288	09	CA	Atlas Asbestos Mine	Fresno County
289	09	CA	Coalinga Asbestos Mine	Coalinga
290	04	FL	Brown Wood Preserving	Live Oak
291	02	NY	Port Washington Landfill	Port Washington
292	05	IN	Columbus Old Municipal Lndfil #1	Columbus
293	02	NJ	Combe Fill South Landfill	Chester Township
294	02	NJ	JIS Landfill	Jamesburg/S. Brnswck
295	02	NY	Tronic Plating Co., Inc.	Farmingdale
296	03	PA	Centre County Kepone	State College Boro
297	04	FL	Agrico Chemical Co.	Pensacola
298	05	OH	Fields Brook	Ashtabula
299	01	CT	Solvents Recovery Service New Eng	Southington
300	08	CO	Woodbury Chemical Co.	Commerce City

Group 7 (HRS Scores 44.86–42.69)

301	02	NJ	Waldick Aerospace Devices, Inc.	Wall Township
302	01	MA	Hocomonco Pond	Westborough
303	04	KY	Distler Brickyard	West Point
304	02	NY	Ramapo Landfill	Ramapo
305	09	CA	Coast Wood Preserving	Ukiah
306	09	CA	South Bay Asbestos Area	Alviso
307	02	NY	Mercury Refining, Inc.	Colonie
308	04	FL	Hollingsworth Solderless Terminal	Fort Lauderdale
309	02	NY	Olean Well Field	Olean
310	09	CA	Fairchild Semiconduct (S San Jose)	South San Jose
311	05	MN	Joslyn Manufacturing & Supply co.	Brooklyn Center
312	03	PA	York County Solid Waste/Refuse Lf	Hopewell Township
313	05	WI	Spickler Landfill	Spencer
314	08	CO	Denver Radium Site	Denver
315	02	NY	Tri-Cities Barrel Co., Inc.	Port Crane
316	03	PA	Route 940 Drum Dump	Pocono Summit
317	04	FL	Tower Chemical Co.	Clermont
318	01	VT	Darling Hill Dump	Lyndon
319	03	PA	C&D Recycling	Foster Township
320	07	MO	Syntex Facility	Verona
321	08	MT	Milltown Reservoir Sediments	Milltown
322	05	MN	Arrowhead Refinery Co.	Hermantown
323	10	OR	Martin-Marietta Aluminum Co.	The Dalles
324	08	CO	Uravan Uranium (Union Carbide)	Uravan
325	02	NJ	Pajak Farm	Plumstead Township
326	02	NJ	Syncon Resins	South Kearny
327	05	MN	Oak Grove Sanitary Landfill	Oak Grove Township
328	09	CA	Liquid Gold Oil Corp.	Richmond
329	09	CA	Purity Oil Sales, Inc.	Malaga
330	01	NH	Tinkham Garage	Londonderry
331	04	FL	Alpha Chemical Corp.	Galloway
332	02	NJ	Bog Creek Farm	Howell Township
333	01	ME	Saco Tannery Waste Pits	Saco
334	03	PA	River Road Lf/Waste Mngmnt, Inc.	Hermitage
335	02	PR	Frontera Creek	Rio Abajo
336	04	FL	Pickettville Road Landfill	Jacksonville
337	05	OH	Alsco Anaconda	Gnadenhutten
338	01	MA	Iron Horse Park	Billerica
339	03	PA	Palmerton Zinc Pile	Palmerton
340	05	IN	Neal's Landfill (Bloomington)	Bloomington
341	05	WI	Kohler Co. Landfill	Kohler
342	04	AL	Interstate Lead Co. (ILCO)	Leeds
343	04	FL	Standard Auto Bumper Corp.	Hialeah
344	07	KS	Hydro-Flex Inc.	Topeka
345	09	AZ	Hassayampa Landfill	Hassayampa
346	06	LA	Gulf Coast Vacuum Services	Abbeville
347	05	IL	Tri-County Lf/Waste Mgmt Illinois	South Elgin
348	01	MA	Silresim Chemical Corp.	Lowell
349	01	MA	Wells G&H	Woburn
350	01	CT	Nutmeg Valley Road	Wolcott

Group 8 (HRS Scores 42.69–41.92)

351	02	NJ	Chemsol, Inc.	Piscataway
352	05	WI	Lauer I Sanitary Landfill	Menomonee Falls
353	05	MI	Petoskey Municipal Well Field	Petoskey
354	05	MN	Union Scrap Iron & Metal Co.	Minneapolis
355	02	NJ	Radiation Technology, Inc.	Rockaway Township
356	02	NJ	Fair Lawn Well Field	Fair Lawn
357	05	IN	Main Street Well Field	Elkhart
358	05	MN	Lehillier/Mankato Site	Lehillier/Mankato
359	10	WA	Lakewood Site	Lakewood

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
360	03	PA	Industrial Lane.....	Williams Township
361	05	IN	Fort Wayne Reduction Dump.....	Fort Wayne
362	05	WI	Onalaska Municipal Landfill.....	Onalaska
363	03	PA	A.I.W. Frank/Mid-County Mustang.....	Exton
364	05	WI	National Presto Industries, Inc.....	Eau Claire
365	02	NJ	Monroe Township Landfill.....	Monroe Township
366	03	PA	Commodore Semiconductor Group.....	Lower Providence Township
367	02	NJ	Rockaway Borough Well Field.....	Rockaway Township
368	05	IL	Lez Oil Service, Inc.....	Lemont
369	05	IN	Wayne Waste Oil.....	Columbia City
370	03	MD	Mid-Atlantic Wood Preservers, Inc.....	Harmans
371	03	PA	Novak Sanitary Landfill.....	South Whitehall Township
372	10	ID	Pacific Hide & Fur Recycling Co.....	Pocatello
373	07	IA	Des Moines TCE.....	Des Moines
374	02	NJ	Beachwood/Berkeley Wells.....	Berkley Township
375	02	NJ	South Jersey Clothing Co.....	Minotola
376	02	NY	Vestal Water Supply Well 4-2.....	Vestal
377	02	PR	Vega Alta Public Supply Wells.....	Vega Alta
378	05	IL	Southeast Rockford Grnd Wtr Con.....	Rockford
379	05	IN	Galen Myers Dump/Drum Salvage.....	Osceola
380	05	MI	Sturgis Municipal Wells.....	Sturgis
381	05	MI	Barrels, Inc.....	Lansing
382	05	MN	Washington County Landfill.....	Lake Elmo
383	06	TX	Odessa Chromium #1.....	Odessa
384	06	TX	Odessa Chromium #2 (Andrews Hwy).....	Odessa
385	07	IA	Electro-Coatings, Inc.....	Cedar Rapids
386	07	NE	Hastings Ground Water Contamin.....	Hastings
387	09	AZ	Indian Bend Wash Area.....	Scottsdale/Tmpe/Phnx
388	09	CA	San Gabriel Valley (Area 1).....	El Monte
389	09	CA	San Gabriel Valley (Area 2).....	Baldwin Park Area
390	09	CA	San Fernando Valley (Area 1).....	Los Angeles
391	09	CA	San Fernando Valley (Area 2).....	Los Angeles/Glendale
392	09	CA	San Fernando Valley (Area 3).....	Glendale
393	09	CA	T.H. Agriculture & Nutrition Co.....	Fresno
394	10	WA	Com Bay, Near Shore/Tide Flats.....	Pierce County
395	05	IL	LaSalle Electric Utilities.....	LaSalle
396	05	IL	Cross Brothers Pail (Pembroke).....	Pembroke Township
397	04	NC	Jadco-Hughes Facility.....	Belmont
398	05	IN	Southside Sanitary Landfill.....	Indianapolis
399	02	NJ	Monitor Devices/Intercircuits Inc.....	Wall Township
400	01	VT	BFI Sanitary Landfill (Rockingham).....	Rockingham
Group 9 (HRS Scores 41.92-39.93)				
401	02	PR	Upjohn Facility.....	Barceloneta
402	04	NC	Koppers Co., Inc. (Morrisville Plant).....	Morrisville
403	09	CA	McColl.....	Fullerton
404	03	PA	Henderson Road.....	Upper Merion Township
405	02	NY	Hooker Chemical/Ruco Polymer Corp.....	Hicksville
406	10	WA	Colbert Landfill.....	Colbert
407	06	LA	Petro-Processors of Louisiana Inc.....	Scottlandville
408	02	NY	Applied Environmental Services.....	Glenwood Landing
409	02	PR	Barceloneta Landfill.....	Florida Afuera
410	01	NH	Tibbets Road.....	Barrington
411	03	MD	Sand, Gravel & Stone.....	Elkton
412	03	PA	Delta Quarries/Stotler Landfill.....	Antis/Logan Townships
413	01	CT	Revere Textile Prints Corp.....	Sterling
414	05	MI	Spartan Chemical Co.....	Wyoming
415	02	NJ	Roebbing Steel Co.....	Florence
416	03	PA	East Mount Zion.....	Springettsbury Township
417	04	GA	T.H. Agricul. & Nutri. (Albany).....	Albany
418	04	TN	Amnicola Dump.....	Chattanooga
419	02	NJ	Vineland State School.....	Vineland
420	09	AZ	Motorola, Inc. (52nd Street Plant).....	Phoenix
421	01	MA	Groveland Wells.....	Groveland
422	02	NY	General Motors (Cent Foundry Div.).....	Massena
423	01	NH	Mottolo Pig Farm.....	Raymond
424	03	VA	Buckingham County Landfill.....	Buckingham
425	04	SC	SCRDI Dixiana.....	Cayce
426	05	MI	Roto-Finish Co., Inc.....	Kalamazoo
427	05	MN	Olmsted County Sanitary Landfill.....	Oronoco
428	07	MO	Quality Plating.....	Sikeston
429	05	IN	Prestolite Battery Division.....	Vincennes
430	07	MO	Fulbright Landfill.....	Springfield
431	02	NJ	Williams Property.....	Swainton
432	02	NJ	Renora, Inc.....	Edison Township
433	04	NC	FCX, Inc. (Washington Plant).....	Washington
434	03	PA	Jacks Creek/Sitkin Smelting & Ref.....	Maitland

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
435	06	NM	Cleveland Mill	Silver City
436	02	NJ	Denzer & Schafer X-Ray Co	Bayville
437	02	NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown
438	05	IN	Ninth Avenue Dump	Gary
439	03	MD	Bush Valley Landfill	Abingdon
440	04	SC	Golden Strip Septic Tank Service	Simpsonville
441	06	TX	Texarkana Wood Preserving Co	Texarkana
442	06	AR	Gurley Pit	Edmondson
443	04	FL	Petroleum Products Corp	Pembroke Park
444	01	RI	Peterson/Puritan, Inc.	Lincoln/Cumberland
445	07	MO	Times Beach Site	Times Beach
446	05	MI	Wash King Laundry	Pleasant Plains Township
447	05	MN	Whittaker Corp	Minneapolis
448	05	WI	Algoma Municipal Landfill	Algoma
449	05	MN	NL Industries/Taracorp/Golden	St. Louis Park
450	09	CA	Westinghouse Elec (Sunnyvale Pit)	Sunnyvale
Group 10 (HRS Scores 39.92-38.10)				
451	01	CT	Kellogg-Deering Well Field	Norwalk
452	03	PA	Boarhead Farms	Bridgeton Township
453	01	MA	Cannon Engineering Corp. (CEC)	Bridgewater
454	05	MI	H. Brown Co., Inc.	Grand Rapids
455	02	NY	Nepera Chemical Co., Inc.	Maybrook
456	02	NY	Niagara County Refuse	Wheatfield
457	04	FL	Sherwood Medical Industries	Deland
458	04	AL	Olin Corp. (McIntosh Plant)	McIntosh
459	05	MI	Southwest Ottawa County Landfill	Park Township
460	02	NY	Kentucky Avenue Well Field	Horseheads
461	02	NY	Pasley Solvents & Chemicals, Inc.	Hempstead
462	06	TX	Sol Lynn/Industrial Transformers	Houston
463	02	NJ	Asbestos Dump	Millington
464	04	KY	Lee's Lane Landfill	Louisville
465	06	AR	Frit Industries	Walnut Ridge
466	05	OH	Fultz Landfill	Jackson Township
467	04	NC	New Hanover Cnty Airport Burn Pit	Wilmington
468	05	OH	Coshocton Landfill	Franklin Township
469	03	PA	AMP, Inc. (Glen Rock Facility)	Glen Rock
470	04	NC	JFD Electronics/Channel Master	Oxford
471	04	TN	Arlington Blending & Packaging	Arlington
472	06	LA	PAB Oil & Chemical Service, Inc.	Abbeville
473	04	FL	Sydney Mine Sludge Ponds	Brandon
474	06	NM	Cimarron Mining Corp.	Carrizozo
475	01	RI	Davis (GSR) Landfill	Glocester
476	03	PA	Lord-Shope Landfill	Girard Township
477	10	WA	FMC Corp. (Yakima Pit)	Yakima
478	05	WI	Northern Engraving Co.	Sparta
479	06	TX	South Cavalcade Street	Houston
480	01	MA	PSC Resources	Palmer
481	05	MI	Forest Waste Products	Otisville
482	03	PA	Drake Chemical	Lock Haven
483	01	NH	Kearsarge Metallurgical Corp.	Conway
484	04	SC	Palmetto Wood Preserving	Dixiana
485	05	IL	Petersen Sand & Gravel	Libertyville
486	05	MI	Clare Water Supply	Clare
487	03	PA	Havertown PCP	Haverford
488	03	DE	New Castle Spill	New Castle County
489	07	MO	St. Louis Airport/HIS/Fut Coatings	St. Louis County
490	08	MT	Idaho Pole Co	Bozeman
491	03	DE	NCR Corp. (Millsboro Plant)	Millsboro
492	05	IN	Lake Sandy Jo (M&M Landfill)	Gary
493	05	IL	Johns-Manville Corp.	Waukegan
494	05	MI	Chem Central	Wyoming Township
495	05	MI	Novaco Industries	Temperance
496	05	MN	Windom Dump	Windom
497	01	RI	Rose Hill Regional Landfill	South Kingstown
498	02	NJ	Jackson Township Landfill	Jackson Township
499	05	IL	NL Industries/Taracorp Lead Smelt	Granite City
500	04	KY	Red Penn Sanitation Co. Landfill	Peewee Valley
Group 11 (HRS Scores 38.10-36.73)				
501	05	MI	K&L Avenue Landfill	Oshtemo Township
502	05	OH	TRW, Inc. (Minerva Plant)	Minerva
503	10	WA	Kaiser Aluminum Mead Works	Mead
504	01	CT	Barkhamsted-New Hartford Landfill	Barkhamsted
505	05	MN	Perham Arsenic Site	Perham
506	05	MI	Charlevoix Municipal Well	Charlevoix
507	02	NJ	Montgomery Township Housing Devel	Montgomery Township

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
508	02	NJ	Rocky Hill Municipal Well	Rocky Hill Borough
509	02	NJ	Cinnaminson Ground Water Contamin	Cinnaminson Township
510	02	NY	Brewster Well Field	Putnam County
511	02	NY	Vestal Water Supply Well 1-1	Vestal
512	03	PA	Bally Ground Water Contamination	Bally Borough
513	04	FL	Chemform, Inc.	Pompano Beach
514	04	FL	Wilson Concepts of Florida, Inc.	Pompano Beach
515	04	NC	Bypass 601 Ground Water Contamin	Concord
516	04	OC	Lexington County Landfill Area	Cayce
517	07	MO	Solid State Circuits, Inc.	Republic
518	07	NE	Waverly Ground Water Contamin	Waverly
519	08	UT	Utah Power&Light/American Barrel	Salt Lake City
520	09	CA	Advanced Micro Devices, Inc.	Sunnyvale
521	10	WA	Hidden Valley Landfill (Thun Field)	Pierce County
522	10	WA	Yakima Plating Co.	Yakima
523	05	MN	Nutting Truck & Caster Co.	Faribault
524	02	NJ	U.S. Radium Corp.	Orange
525	05	MI	Carter Industries, Inc.	Detroit
526	06	TX	Highlands Acid pit	Highlands
527	03	PA	Resin Disposal	Jefferson Borough
528	08	MT	Libby Ground Water Contamination	Libby
529	04	KY	Newport Dump	Newport
530	03	PA	Moyers Landfill	Eagleview
531	01	NH	Savage Municipal Water Supply	Milford
532	05	MN	LaGrand Sanitary Landfill	LaGrand Township
533	05	IN	Poor Farm	Hancock County
534	03	PA	Brown's Battery Breaking	Shoemakersville
535	02	NY	SMS Instruments, Inc.	Deer Park
536	05	MI	Hedblum Industries	Oscoda
537	06	TX	United Creosoting Co.	Conroe
538	02	NY	Byron Barrel & Drum	Bryron
539	08	WY	Baxter/Union Pacific Tie Treating	Laramie
540	02	NY	Anchor Chemicals	Hicksville
541	05	MI	Waste Management-Mich (Holland)	Holland
542	06	TX	North Cavalcade Street	Houston
543	02	NJ	Sayreville Landfill	Sayreville
544	01	NH	Dover Municipal Landfill	Dover
545	02	NY	Ludlow Sand & Gravel	Clayville
546	03	VA	Saunders Supply Co.	Chuckatuck
547	05	WI	City Disposal Corp. Landfill	Dunn
548	02	NJ	Tabernacle Drum Dump	Tabernacle Township
549	07	MO	Minker/Stout/Romaine Creek	Imperial
550	04	KY	Howe Valley Landfill	Howe Valley

Group 12 (HRS Scores 36.72—35.57)

551	01	CT	Yaworski Waste Lagoon	Canterbury
552	03	WV	Leetown Pesticide	Leetown
553	04	SC	Rochester Property	Travelers Rest
554	04	FL	Cabot/Koppers	Gainesville
555	02	NJ	Evor Phillips Leasing	Old Bridge Township
556	03	PA	William Dick Lagoons	West Cain Township
557	05	IN	Douglass Road/Uniroyal, Inc., Lf	Mishawaka
558	03	PA	Lackawanna Refuse	Old Forge Borough
559	06	OK	Compass Industries (Avery Drive)	Tulsa
560	02	NJ	Mannheim Avenue Dump	Galloway Township
561	05	IN	Neal's Dump (Spencer)	Spencer
562	02	NY	Fulton Terminals	Fulton
563	06	LA	Dutchtown Treatment Plant	Ascension Parish
564	03	PA	Westinghouse Elevator Co. Plant	Gettysburg
565	01	NH	Auburn Road Landfill	Londonderry
566	03	WV	Fike Chemical Inc.	Nitro
567	05	MN	General Mills/Henkel Corp.	Minneapolis
568	04	TN	Wrigley Charcoal Plant	Wrigley
569	05	OH	Laskin/Poplar Oil Co.	Jefferson Township
570	05	OH	Old Mill	Rock Creek
571	07	KS	Johns' Sludge Pond	Wichita
572	05	WI	Stoughton City Landfill	Stoughton
573	09	CA	Del Norte Pesticide Storage	Crescent City
574	01	VT	Transitor Electronics, Inc.	Bennington
575	02	NJ	De Rewal Chemical Co.	Kingwood Township
576	03	PA	Middletown Air Field	Middletown
577	02	NJ	Swope Oil & Chemical Co.	Pennsauken
578	04	GA	Monsanto Corp. (Augusta Plant)	Augusta
579	01	NH	South Municipal Water Supply Well	Peterborough
580	01	ME	Winthrop Landfill	Winthrop
581	03	WV	Ordnance Works Disposal Areas	Morgantown
582	05	OH	Zanesville Well Field	Zanesville
583	02	NY	Suffern Village Well Field	Village of Suffern
584	02	NY	Endicott Village Well Field	Village of Endicott

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
585	03	DE	Dover Gas Light Co.	Dover
586	03	PA	Aladdin Plating	Scott Township
587	03	PA	North Penn—Area 1	Souderton
588	03	PA	North Penn—Area 7	North Wales
589	03	PA	North Penn—Area 6	Lansdale
590	03	PA	North Penn—Area 2	Hatfield
591	03	PA	North Penn—Area 5	Montgomery Township
592	04	FL	Harris Corp. (Palm Bay Plant)	Palm Bay
593	05	MN	Kummer Sanitary Landfill	Bemidji
594	05	OH	Sanitary Landfill Co. (IWD)	Dayton
595	05	WI	Eau Claire Municipal Well Field	Eau Claire
596	06	NM	Pagano Salvage	Los Lunas
597	07	MO	Valley Park TCE	Valley Park
598	09	CA	San Fernando Valley (Area 4)	Los Angeles
599	09	CA	Monolithic Memories	Sunnyvale
600	09	CA	National Semiconductor Corp.	Santa Clara

Group 13 (HRS Scores 35.57 - 34.60)

601	09	CA	Fresno Municipal Sanitary Lndfil	Fresno
602	09	CA	Newmark Ground Water Contamin	San Bernardino
603	04	GA	Powersville Site	Peach County
604	05	MI	Grand Traverse Overall Supply Co	Greilickville
605	05	MI	Metamora Landfill	Metamora
606	05	MI	Whitehall Municipal Wells	Whitehall
607	03	DE	Standard Chlorine of Delaware, Inc	Delaware City
608	05	MN	South Andover Site	Andover
609	02	NJ	Diamond Alkali Co	Newark
610	05	IN	Carter Lee Lumber Co	Indianapolis
611	01	NH	Fletcher's Paint Works & Storage	Millford
612	03	VA	Avtex Fibers, Inc.	Front Royal
613	05	MI	Kentwood Landfill	Kentwood
614	05	MI	Electrovoice	Buchanan
615	09	CA	Jasco Chemical Corp.	Mountain View
616	02	NY	Katonah Municipal Well	Town of Bedford
617	09	CA	Teledyne Semiconductor	Mountain View
618	02	PR	Fibers Public Supply Wells	Jobos
619	03	VA	Dixie Caverns County Landfill	Salem
620	05	IN	Marion (Bragg) Dump	Marion
621	05	OH	Pristine, Inc.	Reading
622	05	WI	Mid-State Disposal, Inc. Landfill	Cleveland Township
623	04	TN	American Creosote (Jackson Plant)	Jackson
624	08	CO	Broderick Wood Products	Denver
625	02	NY	C & J Disposal Leasing Co. Cump	Hamilton
626	05	OH	Buckeye Reclamation	St. Clairsville
627	02	NY	Preferred Plating Corp	Farmingdale
628	06	TX	Bio-Ecology Systems, Inc.	Grand Prairie
629	08	UT	Monticello Rad Contaminated Props	Monticello
630	02	NJ	Woodland Route 532 Dump	Woodland Township
631	05	IN	American Chemical Service, Inc.	Griffith
632	01	MA	Salem Acres	Salem
633	02	NY	Richardson Hill Road Lndfil/Pond	Sidney Center
634	01	VT	Old Springfield Landfill	Springfield
635	03	PA	Bell Landfill	Terry Township
636	02	NY	Solvent Savers	Lincklaen
637	03	VA	U.S. Titanium	Piney River
638	05	IL	Galesburg/Koopers Co	Galesburg
639	09	CA	J.H. Baxter & Co	Weed
640	02	NY	Hooker (Hyde Park)	Niagara Falls
641	05	MI	SCA Independent Landfill	Muskegon Heights
642	02	NY	Action Anodizing, Plating Polish	Copague
643	09	CA	MGM Brakes	Cloverdale
644	06	LA	Bayou Sorrel Site	Bayou Sorrel
645	05	MI	Duell & Gardner Landfill	Dalton Township
646	10	WA	Mica Landfill	Mica
647	02	NJ	Ellis Property	Evesham Township
648	04	KY	Distler Farm	Jefferson County
649	09	CA	Waste Disposal, Inc.	Santa Fe Springs
650	10	WA	Harbor Island (Lead)	Seattle

Group 14 (HRS Scores 34.58 - 33.76)

651	05	WI	Lemberger Transport & Recycling	Franklin Township
652	05	OH	E.H. Schilling Landfill	Hamilton Township
653	05	MI	Cliff/Dow Dump	Marquette
654	02	NY	Clothier Disposal	Town of Granby
655	03	PA	Ambler Asbestos Piles	Ambler
656	10	WA	Queen City Farms	Maple Valley
657	02	NJ	Curcio Scrap Metal, Inc	Saddle Brook Township
658	03	VA	L.A. Clarke & Son	Spotsylvania County

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
659	05	WI	Scrap Processing Co. Inc.	Medford
660	03	MD	Southern Maryland Wood Treating	Hollywood
661	05	IL	Ilada Energy Co.	East Cape Girardeau
662	05	WI	Sauk County Landfill	Excelsior
663	06	NM	Homestake Mining Co.	Milan
664	06	TX	Dixie Oil Processors, Inc.	Friendswood
665	09	CA	Beckman Instruments (Porterville)	Porterville
666	04	FL	Dubose Oil Products Co.	Cantonment
667	05	MI	Mason County Landfill	Pere Marquette Township
668	05	MI	Cemetery Dump	Rose Center
669	07	IA	Red Oak City Landfill	Red Oak
670	05	IN	Lakeland Disposal Service, Inc.	Claypool
671	02	NJ	Hopkins Farm	Plumstead Township
672	04	NC	Cape Fear Wood Preserving	Fayetteville
673	01	RI	Stamina Mills, Inc.	North Smithfield
674	05	WI	Lemberger Landfill, Inc.	Whitelaw
675	05	IN	Reilly Tar (Indianapolis Plant)	Indianapolis
676	01	ME	Pinette's Salvage Yard	Washburn
677	01	CT	Durham Meadows	Durham
678	05	MI	Kysor Industrial Corp.	Cadillac
679	09	CA	Lorentz Barrel & Drum Co.	San Jose
680	02	NJ	Wilson Farm	Plumstead Township
681	02	NY	Conklin Dumps	Conklin
682	03	PA	Old City of York Landfill	Seven Valleys
683	03	PA	Modern Sanitation Landfill	Lower Windsor Township
684	05	IL	Byron Salvage Yard	Byron
685	05	MI	North Bronson Industrial Area	Bronson
686	03	PA	Stanley Kessler	King of Prussia
687	07	MO	Kem-Pest Laboratories	Cape Girardeau
688	02	NJ	Imperial Oil-Champion Chemicals	Morganville
689	02	NJ	Cosden Chemical Coatings Corp.	Beverly
690	05	MN	St. Augusta San Lndfl/Engen Dump	St. Augusta Township
691	02	NJ	Myers Property	Franklin Township
692	02	NJ	Pepe Field	Boonton
693	04	KY	Tri-City Disposal Co.	Shepherdsville
694	10	WA	Northwest Transformer	Everson
695	02	NY	Genzale Plating Co.	Franklin Square
696	05	MI	Albion-Sheridan Township Landfill	Albion
697	05	WI	Sheboygan Harbor & River	Sheboygan
698	05	MI	Ossineke Ground Water Contamin.	Ossineke
699	03	WV	Follansbee Site	Follansbee
700	03	PA	Keystone Sanitation Landfill	Union township

Group 15 (HRS Scores 33.76—32.38)

701	04	NC	Carolina Transformer Co.	Fayetteville
702	02	NY	North Sea Municipal Landfill	North Sea
703	03	PA	Bendix Flight Systems Division	Bridgewater Township
704	09	CA	Koppers Co. Inc. (Oroville Plant)	Oroville
705	09	CA	Louisiana-Pacific Corp.	Oroville
706	03	VA	H & H Inc., Burn Pit	Farrington
707	05	MI	South Macomb Disposal (L1 9 & 9A)	Macomb Township
708	05	MI	U.S. Aviox	Howard Township
709	03	PA	Walsh Landfill	Honeybrook Township
710	02	NJ	Landfill & Development Co.	Mount Holly
711	02	NJ	Upper Deerfield Township San Lndf.	Upper Deerfield Township
712	02	NY	Hertel Landfill	Plattekill
713	02	NY	Haviland Complex	Town of Hyde Park
714	02	NY	Malta Rocket Fuel Area	Malta
715	04	GA	Cedartown Municipal Landfill	Cedartown
716	05	MI	Kent City Mobile Home Park	Kent City
717	05	MN	Adrian Municipal Well Field	Adrian
718	06	NM	AT & SF (Clovis)	Clovis
719	07	KS	Strother Field Industrial Park	Cowley County
720	07	KS	Obee Road	Hutchinson
721	02	NJ	Fried Industries	East Brunswick Township
722	02	NY	American Thermostat Co.	South Cairo
723	08	ND	Minot Landfill	Minot
724	04	TN	Lewisburg Dump	Lewisburg
725	05	MI	McGraw Edison Corp.	Albion
726	02	NY	Goldisc Recordings, Inc.	Holbrook
727	02	NY	Islip Municipal Sanitary Landfill	Islip
728	04	KY	Airco	Calvert City
729	03	PA	Metal Banks	Philadelphia
730	05	IL	Yeoman Creek Landfill	Waukegan
731	02	NY	Samney Farm	Amenia
732	05	MI	Folkertsma Refuse	Grand Rapids
733	01	MA	Rose Disposal Pit	Lanesboro

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
734	05	OH	Van Dale Junkyard	Marietta
735	08	MT	Montana Pole and Treating	Butte
736	04	NC	Geigy Chemical Corp (Aberdeen Pit)	Aberdeen
737	04	KY	B.F. Goodrich	Calvert City
738	05	MI	Organic Chemicals, Inc.	Grandville
739	02	NY	BioClinical Laboratories, Inc.	Bohemia
740	02	NY	Volney Municipal Landfill	Town of Volney
741	02	NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby
742	05	WI	Tomah Fairgrounds	Tomah
743	01	MA	Sullivan's Ledge	New Bedford
744	04	KY	Smith's Farm	Brooks
745	10	OR	Joseph Forest Products	Joseph
746	02	PR	Juncos Landfill	Juncos
747	07	KS	Big River Sand Co.	Wichita
748	05	IN	Bennett Stone Quarry	Bloomington
749	10	WA	Wyckoff Co./Eagle Harbor	Bainbridge Island
750	02	NJ	Industrial Latex Corp.	Wallington Borough

Group 16 (HRS Scores 32.37—31.62)

751	04	FL	Munisport Landfill	North Miami
752	06	LA	D.L. Mud, Inc.	Abbeville
753	04	AL	Stauffer Chem (LeMoyné Plant)	Axis
754	02	NJ	M&T Delisa Landfill	Asbury Park
755	06	TX	Crystal City Airport	Crystal City
756	04	SC	Geiger (C & M Oil)	Rantoules
757	05	WI	Moss-American (Kerr-McGee Oil Co.)	Milwaukee
758	05	WI	Waste Research & Reclamation Co.	Eau Claire
759	10	OR	Gould, Inc.	Portland
760	01	ME	Union Chemical Co., Inc.	South Hope
761	02	NY	Cortese Landfill	Vil of Narrowsburg
762	09	CA	Montrose Chemical Corp.	Torrance
763	05	MN	St. Louis River Site	St. Louis County
764	05	MI	Auto Ion Chemicals, Inc.	Kalamazoo
765	03	PA	Recticon/Allied Steel Corp.	East Coventry Township
766	05	WI	Hagen Farm	Stoughton
767	04	SC	Carolawn, Inc.	Fort Lawn
768	07	IA	Midwest Manufacturing/North Farm	Kellogg
769	03	PA	Berks Sand Pit	Longswamp Township
770	09	CA	Valley Wood Preserving, Inc.	Turlock
771	03	PA	Butz Landfill	Stroudsburg
772	04	FL	City Industries, Inc.	Orlando
773	05	MI	Sparta Landfill	Sparta Township
774	05	IL	Acme Solvent (Morrison Plant)	Morristown
775	01	NH	Holton Circle Ground Water Contam.	Londonderry
776	02	NJ	Pomona Oaks Resident Wells	Galloway Township
777	02	NY	Rowe Industries Ground Water Cont.	Noyack/Sag Harbor
778	03	PA	Hebelka Auto Salvage Yard	Weisenberg Township
779	04	FL	Hipps Road Landfill	Duval County
780	05	MN	Long Prairie Ground Water Contam.	Long Prairie
781	05	MN	Waite Park Wells	Waite Park
782	09	CA	Applied Materials	Santa Clara
783	09	CA	Intel Magnetics	Santa Clara
784	09	CA	Intel Corp. (Santa Clara III)	Santa Clara
785	09	CA	Synertek, Inc. (Building 1)	Santa Clara
786	04	FL	Pepper Steel & Alloys, Inc.	Medley
787	02	NY	Mattiace Petrochemical Co., Inc.	Glen Cove
788	01	ME	O'Connor Co.	Augusta
789	05	WI	Oconomowoc Electroplating Co. Inc.	Ashippin
790	05	IN	Continental Steel Corp.	Kokomo
791	05	MI	Rasmussen's Dump	Green Oak Township
792	02	NY	Kenmark Textile Corp.	Farmingdale
793	04	FL	Wingate Road Munic Incinerat Dump	Fort Lauderdale
794	03	PA	Westline Site	Westline
795	04	KY	Maxey Flats Nuclear Disposal	Hillsboro
796	04	NC	Benfield Industries, Inc.	Hazelwood
797	08	MT	Mouat Industries	Columbus
798	05	MI	J & L Landfill	Rochester Hills
799	02	NY	Claremont Polychemical	Old Bethpage
800	05	OH	Powell Road Landfill	Dayton

Group 17 (HRS Scores 31.60—30.44)

801	03	PA	Croydon TCE	Croydon
802	04	SC	Medley Farm Drum Dump	Gaffney
803	04	SC	Elmore Waste Disposal	Greer
804	07	IA	Vogel Paint & Wax Co.	Orange City
805	05	MN	Kurt Manufacturing Co.	Fridley
806	05	MI	Parsons Chemical Works, Inc.	Grand Ledge
807	03	PA	Revere Chemical Co.	Nockamixon Township

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
808	05	MI	Ionia City Landfill	Ionia
809	06	TX	Koppers Co., Inc. (Texarkana Plant)	Texarkana
810	08	CO	Lincoln Park	Canon City
811	08	CO	Smuggler Mountain	Pitkin County
812	05	IN	Wedzeb Enterprises, Inc.	Lebanon
813	02	PR	GE Wiring Devices	Juana Diaz
814	05	MI	Avenue "E" Ground Water Contamin	Traverse City
815	05	OH	New Lyme Landfill	New Lyme
816	02	NJ	Woodland Route 72 Dump	Woodland Township
817	02	PR	RCA Del Caribe	Barceloneta
818	05	MN	Koch Refining Co./N-Ren Corp	Pine Bend
819	03	PA	Brodhead Creek	Stroudsburg
820	05	WI	Fadowski Drum Disposal	Franklin
821	10	OR	United Chrome Products, Inc.	Corvallis
822	03	PA	Eastern Diversified Metals	Hometown
823	05	MI	Anderson Development Co.	Adrian
824	05	WI	Hunts Disposal Landfill	Caledonia
825	05	MI	Shiawassee River	Howell
826	06	OK	Tenth Street Dump/Junkyard	Oklahoma City
827	10	AK	Alaska Battery Enterprises	Fairbanks N Star Borough
828	03	PA	Taylor Borough Dump	Taylor Borough
829	03	DE	Halby Chemical Co.	New Castle
830	06	OK	Double Eagle Refinery Co.	Oklahoma City
831	04	GA	Mathis Bros Lt (S Marble Top Rd.)	Kensington
832	03	DE	Harvey & Knott Drum, Inc.	Kirkwood
833	04	TN	Galloway Pits	Galloway
834	05	OH	Big D Campground	Kingsville
835	06	AR	Midland Products	Ola/Birta
836	02	NY	Robintech, Inc./National Pipe Co.	Town of Vestal
837	02	NY	BEC Trucking	Town of Vestal
838	03	PA	Strasburg Landfill	Newlin Township
839	06	OK	Fourth Street Abandoned Refinery	Oklahoma City
840	02	NJ	Witco Chemical Corp. (Oakland Plt)	Oakland
841	05	WI	Tomah Armory	Tomah
842	03	DE	Wildcat Landfill	Dover
843	05	MI	Burrows Sanitation	Hartford
844	03	PA	Blosenski Landfill	West Cain Township
845	03	VA	Rhinehart Tire Fire Dump	Frederick County
846	03	DE	Delaware City PVC Plant	Delaware City
847	03	MD	Limestone Road	Cumberland
848	02	NY	Hooker (102nd Street)	Niagara Falls
849	02	NJ	Higgins Farm	Franklin Township
850	10	WA	American Crossarm & Conduit Co	Chehalis

Group 18 (HRS Scores 30.36-29.07)

851	06	NM	United Nuclear Corp.	Church Rock
852	03	PA	Reeser's Landfill	Upper Macungie Township
853	03	VA	Rentokil, Inc. (VA Wood Pres. Div.)	Richmond
854	06	AR	Industrial Waste Control	Fort Smith
855	09	CA	Celtor Chemical Works	Hoopla
856	01	MA	Haverhill Municipal Landfill	Haverhill
857	04	AL	Perdido Ground Water Contamin	Perdido
858	02	NY	Marathon Battery Corp	Cold Springs
859	02	NY	Colesville Municipal Landfill	Town of Colesville
860	04	FL	Yellow Water Road Dump	Baldwin
861	04	GA	Marzone Inc./Chevron Chemical Co.	Tifton
862	05	OH	Skinner Landfill	West Chester
863	03	VA	First Piedmont Quarry (Route 719)	Pittsylvania County
864	04	NC	Chemtronics, Inc.	Swannanoa
865	05	IN	MIDCO II	Gary
866	06	TX	Sheridan Disposal Services	Hempstead
867	07	KS	Pester Refinery Co	El Dorado
868	03	MD	Kane & Lombard Street Drums	Baltimore
869	07	MO	Shenandoah Stables	Moscow Mills
870	04	GA	Firestone Tire (Albany Plant)	Albany
871	07	IA	Shaw Avenue Dump	Charles City
872	03	PA	Berkley Products Co. Dump	Denver
873	10	WA	Silver Mountain Mine	Loomis
874	06	TX	Petro-Chemical (Turtle Bayou)	Liberty County
875	05	OH	Republic Steel Corp. Quarry	Elyria
876	07	MO	Conservation Chemical Co.	Kansas City
877	05	MN	Ritari Post & Pole	Sebekka
878	06	LA	Bayou Bonfouca	Slidell
879	09	CA	Intel Corp. (Mountain View Plant)	Mountain View
880	09	CA	Raytheon Corp.	Mountain View
881	05	MN	Agate Lake Scrapyard	Fairview Township
882	05	MI	Adam's Plating	Lansing

APPENDIX B.—NATIONAL PRIORITIES LIST (BY RANK), OCTOBER 1989—Continued

NPL Rank	EPA Reg	State	Site Name	City/County
883	06	AR	Jacksonville Municipal Landfill	Jacksonville
884	06	AR	Rogers Road Municipal Landfill	Jacksonville
885	03	VA	Saltville Waste Disposal Ponds	Saltville
886	04	SC	Palmetto Recycling, Inc.	Columbia
887	01	MA	Shpack Landfill	Norton/Attleboro
888	03	PA	Kimberton Site	Kimberton Borough
889	04	TN	Mallory Capacitor Co.	Waynesboro
890	01	MA	Norwood PCBs	Norwood
891	02	NY	Warwick Landfill	Warwick
892	02	NY	Sidney Landfill	Sidney
893	10	WA	Pesticide Lab (Yakima)	Yakima
894	05	IN	Lemon Lane Landfill	Bloomington
895	05	IN	Tri-State Plating	Columbus
896	10	ID	Arcom (Drexler Enterprises)	Rathdrum
897	01	NH	Coakley Landfill	North Hampton
898	04	NC	Potter's Septic Tank Service Pits	Maco
899	04	NC	ABC One Hour Cleaners	Jacksonville
900	03	PA	Fischer & Porter Co.	Warminster

Group 19 (HRS Scores 28.98-28.50, except for health-advisory sites)

901	03	PA	Elizabethtown Landfill	Elizabethtown
902	06	AR	Arkwood, Inc.	Omaha
903	09	CA	Jibboom Junkyard	Sacramento
904	02	NJ	A. O. Polymer	Sparta Township
905	05	WI	Wausau Ground Water Contamination	Wausau
906	02	NJ	Dover Municipal Well 4	Dover Township
907	02	NJ	Rockaway Township Wells	Rockaway
908	02	NJ	Pohatcong Valley Ground Water Con.	Warren County
909	02	NJ	Garden State Cleaners Co.	Minotola
910	03	DE	Sussex County Landfill No. 5	Laurel
911	05	WI	Delavan Municipal Well #4	Delavan
912	07	MO	North-U Drive Well Contamination	Springfield
913	09	CA	San Gabriel Valley (Area 3)	Alhambra
914	09	CA	San Gabriel Valley (Area 4)	La Puente
915	09	CA	Modesto Ground Water Contamin.	Modesto
916	10	WA	American Lake Gardens	Tacoma
917	10	WA	Greenacres Landfill	Spokane County
918	10	WA	Northside Landfill	Spokane
919	06	OK	Sand Springs Petrochemical Cmplx	Sand Springs
920	06	TX	Pesses Chemical Co.	Fort Worth
921	05	MN	East Bethel Demolition Landfill	East Bethel Township
922	06	TX	Triangle Chemical Co.	Bridge City
923	02	NJ	PJP Landfill	Jersey City
924	03	PA	Craig Farm Drum	Parker
925	05	IL	Belvidere Municipal Landfill	Belvidere
926	07	MO	Bee Cee Manufacturing Co.	Malden
927	03	PA	CryoChem, Inc.	Worman
928	02	NJ	Kauffman & Minter, Inc.	Jobstown
929	03	PA	Lansdowne Radiation Site	Lansdowne

* = State top priority site.
Number of NPL Sites: 929.

NATIONAL PRIORITIES LIST, FEDERAL SECTION (BY GROUP), OCTOBER 1989

NPL Groups ¹	State	Site Name	City/County
1	WA	Hanford 200-Area (USDOE)	Benton County
1	WA	Hanford 300-Area (USDOE)	Benton County
1	CO	Rocky Flats Plant (USDOE)	Golden
1	NM	Cal West Metals (USSBA)	Lemitar
1	MO	Weldon Spring (USDOE/Army)	St. Charles County
2	TN	Milan Army Ammunition Plant	Milan
2	CO	Rocky Mountain Arsenal	Adams County
2	CA	McClellan AFB (Ground Water Cont.)	Sacramento
2	PA	Naval Air Develop Center (8 Areas)	Warminster Townshp
2	OH	Wright-Patterson Air Force Base	Dayton
4	AL	Anniston Army Depot (SE Ind Area)	Anniston
4	GA	Robins AFB (Lndfil #4/Sludge Lag)	Houston County
4	NE	Cornhusker Army Ammunition Plant	Hall County
4	NJ	Naval Air Engineering Center	Lakehurst
4	UT	Hill Air Force Base	Ogden
5	NJ	W.R. Grace/Wayne Int Stor (USDOE)	Wayne Township
6	WA	Hanford 100-Area (USDOE)	Benton County
6	UT	Ogden Defense Depot	Ogden
7	CA	Sacramento Army Depot	Sacramento
7	IL	Sangamo/Crab Orchard NWR (USDOI)	Cartersville
7	ME	Brunswick Naval Air Station	Brunswick

NATIONAL PRIORITIES LIST, FEDERAL SECTION (BY GROUP), OCTOBER 1989—Continued

NPL Groups ¹	State	Site Name	City/County
8.....	CA	Sharpe Army Depot.....	Lathrop
8.....	OK	Tinker AFB (Soldier Cr/Bldg 3001).....	Oklahoma City
8.....	CA	Lawrence Livermore Lab (USDOE).....	Livermore
8.....	WA	McChord AFB (Wash Rack/Treatment).....	Tacoma
8.....	IL	Savanna Army Depot Activity.....	Savanna
10.....	CA	Norton Air Force Base.....	San Bernardino
11.....	CA	Castle Air Force Base.....	Merced
11.....	PA	Letterkenny Army Depot (PDO Area).....	Franklin County
11.....	NJ	Fort Dix (Landfill Site).....	Pemberton Township
11.....	AL	Alabama Army Ammunition Plant.....	Childersburg
12.....	WA	Hanford 1100-Area (USDOE).....	Benton County
12.....	DE	Dover Air Force Base.....	Dover
13.....	IL	Joliet Army Ammu Plant (LAP Area).....	Joliet
14.....	PR	Naval Security Group Activity.....	Sabana Seca
14.....	PA	Letterkenny Army Depot (SE Area).....	Chambersburg
14.....	NY	Griffiss Air Force Base.....	Rome
14.....	VA	Defense General Supply Center.....	Chesterfield County
14.....	WA	Fort Lewis (Landfill No. 5).....	Tacoma
15.....	MN	Twin Cities Air Force (SAR Lndfill).....	Minneapolis
15.....	MO	Lake City Army Plant (NW Lagoon).....	Independence
15.....	WA	Naval Undersea Wharf Sta (4 Areas).....	Keyport
15.....	NC	Camp Lejeune Military Reservation.....	Onslow County
16.....	IL	Joliet Army Ammu Plant (Mig Area).....	Joliet
16.....	WA	Fairchild Air Force Base (4 Areas).....	Spokane County
16.....	TX	Lone Star Army Ammunition Plant.....	Texarkana
17.....	OR	Umatilla Army Depot (Lagoons).....	Hermiston
17.....	MD	Aber Prov Ground-Michaelsville Lt.....	Aberdeen
17.....	WA	Bangor Ordnance Disposal.....	Bremerton
18.....	LA	Louisiana Army Ammunition Plant.....	Doyline
18.....	CA	Moffett Naval Air Station.....	Sunnyvale
19.....	CA	Mather AFB (AC&W Disposal Site).....	Sacramento

*State top priority site.

¹ Sites are placed in groups corresponding to groups of 50 on the final NPL.
Number of NPL Federal Facility Sites: 52.

[FR Doc. 89-23337 Filed 10-3-89; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2696/Pub. L. 101-101

Energy and Water Development Appropriations Act, 1990. (Sept. 29, 1989; 103 Stat. 641; 27 pages) Price: \$1.00

H.J. Res. 204/Pub. L. 101-102

To designate October 1989, as "National Quality Month". (Sept. 29, 1989; 103 Stat. 668; 2 pages) Price: \$1.00

